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WHEN: Tuesday, May 17, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–49–AD; Amendment 39–14081; AD 2005–10–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes. This AD requires repetitive inspections of the left- and right-side main landing gear (MLG) side-stay cuff lugs and down-lock spring attachments for evidence of cracked or fractured side-stay cuff lugs or down-lock spring

attachments, and repair if necessary. This AD also provides for optional terminating action for the repetitive inspections. This action is necessary to prevent failure of the MLG side-stay cuff lugs or down-lock spring attachments, which could result in improper down-lock of the MLG during a freefall extension, and possible collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective June 15, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on October 15, 2003 (68 FR 59347). That action proposed to require repetitive inspections of the left- and right-side main landing gear (MLG) side-stay cuff lugs and down-lock spring attachments for evidence of cracked or fractured side-stay cuff lugs or down-lock spring attachments, and repair if necessary. That action also provided for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support of the Proposed AD

Several commenters, including the airplane manufacturer, support the intent of the proposed AD.

Request To Reference Revised Service Information

Several commenters note that Airbus has revised the service information cited in the proposed AD. The commenters suggest that the proposed AD be changed to reference the revised service information, as identified in the following table.

TABLE—REVISED SERVICE INFORMATION/SERVICE INFORMATION CITED IN PROPOSED AD

Revised Airbus service information—	Cited in the proposed AD as—	For accomplishing the—	Referenced in the following paragraph(s) of the proposed AD—
Airbus A319/A320/A321 Maintenance Planning Document, Revision 26a, dated July 31, 2003.	Airbus A318/A319/A320/A321 Maintenance Planning Document, Revision 25, dated October 2001.	Alternative to the inspection requirements in paragraph (a) of the proposed AD.	(d).
A320–32–1223, Revision 01, dated June 11, 2002.	A320–32–1223, dated March 5, 2001	Optional terminating action	(e).
A320–32A1224, Revision 01, dated June 11, 2002.	A320–32A1224, dated January 18, 2001.	Inspection and part replacement	(a) and (c).

We agree that this AD should reference the revised Airbus service information. We have reviewed the revised service information and determined that the majority of changes are editorial. Revision 01 of Service Bulletin A320–32A1224 includes the

compliance times mandated in French airworthiness directive 2002–075(B), dated January 23, 2002. Instead of referring operators to Chapter 32–11–19 of the Airbus A319/A320/A321 Aircraft Maintenance Manual, Revision 01 includes Figure 1, which shows the

inspection areas for the side-stay cuffs and links. We have revised paragraphs (a) and (c) of this AD to reference Airbus Service Bulletin A320–32A1224, Revision 01, dated June 11, 2002, and removed the citation for the original issue of that service bulletin. We have

also included a new paragraph (d) in this AD to give credit for inspections and part replacements accomplished before the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-32A1224, dated January 18, 2001, and changed the designations of the subsequent paragraphs.

We have revised paragraph (e) of this AD (paragraph (d) of the proposed AD) to include Revision 26a, dated July 31, 2003, of the Airbus A318/A319/A320/A321 Maintenance Planning Document (MPD). In addition, we have revised the description of task number 321119-01-1 to reflect the description as changed in Revision 26a of the MPD.

In addition, we have revised paragraph (f) of this AD (paragraph (e) of the proposed AD) to include the citation for Service Bulletin A320-32-1223, Revision 01, dated June 11, 2002, as an additional source of service information for accomplishing the optional terminating action.

Request To Change Type of Inspection

Two commenters note that paragraph (a) of the proposed AD specifies that operators should do a detailed inspection for cracked or fractured lugs. The commenters point out that the parallel French airworthiness directive, 2002-075(B), dated January 23, 2002; Airbus Service Bulletin A320-32A1224, Revision 01; and task number 321119-01-1, "Mechanism Visual Check of Main Landing Gear Downlocking Springs and Side-stay Center Joint Links and Cuff," of the Airbus A318/A319/A320/A321 MPD; recommend a visual check to ensure the lugs are not ruptured. The commenters suggest that the inspection terminology in the proposed AD be changed from "detailed inspection" to "visual check" in order to harmonize with the Airbus service information. One commenter states that the intent of the action is to look for obvious damage; therefore, visual check is more appropriate verbiage than detailed inspection.

We agree with the intent of the commenters' requests and have revised paragraph (a) of this AD to reference a "general visual inspection" instead of a "detailed inspection." We also revised Note 1 of this AD to provide the definition of a general visual inspection. When included in an AD, the term "check" means something other than a cursory inspection of an item, and the requirements of this AD do not warrant the use of that term.

Request To Revise Compliance Time

One commenter requests that the compliance times in paragraph (a) of the

proposed AD be changed from flight hours to flight cycles. Specifically, the commenter requests that paragraph (a)(1) of the proposed AD be changed from "Within 60 months from the first entry into service of the MLG, or before the accumulation of 9,000 total flight hours on the MLG, whichever occurs first" to "Within 60 months from the first entry into service of the MLG, or before 7,200 total flight cycles on the MLG, whichever occurs first." The commenter also requests that the compliance time in paragraph (a)(2) of the proposed AD be changed from "Within 500 flight hours on the MLG after the effective date of this AD" to "Within 500 flight cycles on the MLG after the effective date of this AD." The commenter states that it tracks MLG side-stays by flight cycles, in accordance with its approved maintenance program, and that changing the initial inspection to flight cycles would allow the inspection to be incorporated within a scheduled maintenance check. The commenter did not provide any information regarding how it converted 9,000 total flight hours to 7,200 total flight cycles, or how it converted 500 flight hours to 500 flight cycles.

We agree with the intent of the commenter's request, but we do not agree to revise the compliance times in paragraphs (a)(1) and (a)(2) of this AD from flight hours to flight cycles. We do not have any technical justification for making the requested changes. When determining the compliance time for this AD, we considered the compliance time specified in the parallel French airworthiness directive, the airplane manufacturer's recommendation, and the average utilization of the affected fleet. According to the provisions of paragraph (g) of this AD, anyone may submit a request to adjust the compliance time if the request includes data that justify that a different compliance time would provide an acceptable level of safety. We have not changed this AD regarding this issue.

Explanation of Change to This AD

Paragraphs (b), (c), and (e) of this AD have been revised to change the repetitive inspection intervals from 500 flight cycles to 500 flight hours. Although the French airworthiness directive, the Airbus service information, and the compliance times in paragraph (a) of this AD state compliance times in flight hours, we inadvertently stated the repetitive inspection intervals in flight cycles instead of flight hours.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 367 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$130 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States,

or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–10–04 Airbus: Amendment 39–14081. Docket 2002–NM–49–AD.

Applicability: Airbus Model A319, A320, and A321 series airplanes; certificated in any category; except those airplanes on which Airbus Modification 30648 has been installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG side-stay cuff lugs or down-lock spring attachments, which could result in improper down-lock of the MLG during a freefall extension, and possible collapse of the MLG, accomplish the following:

Inspection

(a) Do a general visual inspection of the left- and right-side main landing gear (MLG) side-stay cuff lugs and down-lock spring attachments to detect failures (cracked or fractured lugs), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32A1224, Revision 01,

dated June 11, 2002, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 60 months from the first entry into service of the MLG, or before the accumulation of 9,000 total flight hours on the MLG, whichever occurs first.

(2) Within 500 flight hours on the MLG after the effective date of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) If, during any inspection required by paragraph (a) of this AD, no crack or fracture is detected: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours until the actions specified in paragraph (f) of this AD are accomplished.

(c) If, during any inspection required by paragraph (a) of this AD, any crack or fracture is detected: Before further flight, replace any discrepant part with a new part of the same type in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32A1224, Revision 01, dated June 11, 2002. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours until the actions specified in paragraph (f) of this AD are accomplished.

Actions Accomplished Previously per Earlier Revision of the Service Bulletin

(d) Inspections and part replacements accomplished before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32A1224, dated January 18, 2001, are considered acceptable for compliance with the requirements of paragraphs (a), (b), and (c) of this AD.

Actions Accomplished per the Maintenance Planning Document

(e) Compliance with task number 321119–01–1, "Mechanism Visual Check of Main Landing Gear Downlocking Springs and Side-stay Center Joint Links and Cuff," in Revision 25, dated October 2001; or Revision 26a, dated July 31, 2003; of the Airbus A318/A319/A320/A321 Maintenance Planning Document; is considered acceptable for compliance with the inspection requirements of paragraph (a) of this AD. Operators should note that this task requires repetitive inspections at 8-day intervals, instead of intervals not to exceed 500 flight hours.

Optional Terminating Action

(f) Replacement of the MLG side-stay lugs and links on the left and right sides of the airplane, with lugs and links made of new,

improved material, in accordance with Airbus Service Bulletin A320–32–1223, dated March 5, 2001; or Revision 01, dated June 11, 2002; terminates the repetitive inspections required by paragraphs (b) and (c) of this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions must be done in accordance with Airbus Service Bulletin A320–32A1224, Revision 01, dated June 11, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, go to Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–075(B), dated January 23, 2002.

Effective Date

(i) This amendment becomes effective on June 15, 2005.

Issued in Renton, Washington, on April 29, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–9196 Filed 5–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20414; Directorate Identifier 2004–NM–116–AD; Amendment 39–14079; AD 2005–10–02]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dornier Model 328–300 series airplanes.

This AD requires installing an additional mounting angle for the respective de-icing pipes at rib 9 in the leading edge area of the left- and right-hand wings. This AD is prompted by chafed de-icing lines in the wing leading edge area. We are issuing this AD to prevent chafing of the de-icing lines, which could result in a reduction in functionality of the anti-ice system, and possibly reduced controllability and performance of the airplane in icing conditions.

DATES: This AD becomes effective June 15, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of June 15, 2005.

ADDRESSES: For service information identified in this AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D-82230 Wessling, Germany.

Docket: The AD docket contains the proposed AD, comments, and any final

disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Washington, DC. This docket number is FAA-2005-21404; the directorate identifier for this docket is 2004-NM-116-AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Dornier Model 328-300

series airplanes. That action, published in the **Federal Register** on February 22, 2005 (70 FR 8547), proposed to require installing an additional mounting angle for the respective de-icing pipes at rib 9 in the leading edge area of the left- and right-hand wings.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation	8	\$65	\$252	\$772	49	\$37,828

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the National Government and the States,

or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005-10-02 Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Amendment 39-14079. Docket No. FAA-2005-20414; Directorate Identifier 2004-NM-116-AD.

Effective Date

(a) This AD becomes effective June 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Dornier Model 328-300 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by chafed de-icing lines in the wing leading edge area. We are issuing this AD to prevent chafing of the de-icing lines, which could result in a reduction in functionality of the anti-ice

system, and possibly reduced controllability and performance of the airplane in icing conditions.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation

(f) Within 90 days after the effective date of this AD, install an additional mounting angle at rib 9 in the leading edge area of the left- and right-hand wings in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB-328J-30-190, dated July 16, 2003.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) German airworthiness directive D-2004-049, dated February 1, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Dornier Service Bulletin SB-328J-30-190, dated July 16, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact AvCraft Aerospace GmbH, P.O. Box 1103, D-82230 Wessling, Germany. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, contact the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on April 29, 2005.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 05-9197 Filed 5-10-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20081; Directorate Identifier 2004-NM-132-AD; Amendment 39-14080; AD 2005-10-03]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200 and 777-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777-200 and -300 series airplanes. This AD requires modification of the operational program software (OPS) of the air data inertial reference unit (ADIRU). This AD is prompted by a report of the display of erroneous heading information to the pilot due to a defect in the OPS of the ADIRU. We are issuing this AD to prevent the display of erroneous heading information to the pilot, which could result in loss of the main sources of attitude data, consequent high pilot workload, and subsequent deviation from the intended flight path.

DATES: This AD becomes effective June 15, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of June 15, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Washington, DC. This docket number is FAA-2005-20081; the directorate identifier for this docket is 2004-NM-132-AD.

FOR FURTHER INFORMATION CONTACT: Paul Feider, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton,

Washington 98055-4056; telephone (425) 917-6467; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 777-200 and -300 series airplanes. That action, published in the **Federal Register** on January 19, 2005 (70 FR 2980), proposed to require modification of the operational program software (OPS) of the air data inertial reference unit (ADIRU).

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support for the Proposed AD

One commenter supports the proposed AD and states that it is appropriate because it will prevent future occurrences of erroneous heading information being presented to the pilot. Another commenter states that it understands the need for the modification to the affected OPS of the ADIRU and does not have any objection to the proposed AD. The second commenter adds that the modification was accomplished on all its Model 777 series airplanes in calendar year 2002.

Request To Add New Service Information

Two commenters ask that Boeing Service Bulletin 777-34-0094, dated June 10, 2004, be added to the proposed AD as an additional source of service information for accomplishing the modification of the OPS of the ADIRU.

One commenter, the airplane manufacturer, states that the new service bulletin provides procedures for installation of a newer version of the OPS of the ADIRU, which contains the fix required by the proposed AD. The commenter suggests adding the new service bulletin to paragraph (f) of the proposed AD as an option for accomplishing the modification in the proposed AD, instead of using the service bulletin currently referenced.

Another commenter states that it is concerned about any wording in the proposed AD that may affect and impact any future installations of new OPS of the ADIRU. The commenter adds that it is imperative that the proposed AD address this issue as Boeing has already released a new service bulletin. The commenter notes that the new service bulletin contains information for updating the existing software with an adjusted Mach function; the proposed AD would mandate installation of previous OPS of the ADIRU per Boeing

Service Bulletin 777–34A0082, Revision 1, dated December 19, 2002. The commenter has already incorporated the installation of OPS of the ADIRU per the mandated bulletin, and has also incorporated the installation of OPS of the ADIRU per Service Bulletin 777–34–0094. The commenter is concerned that an Alternative Method of Compliance (AMOC) may now be required for any operator that has incorporated or will incorporate software upgrades in the future.

We agree with the intent of the commenters' requests to reference Boeing Service Bulletin 777–34–0094, we have reviewed the service bulletin and we determined that it addresses the unsafe condition appropriately. Therefore, we have changed paragraph (f) of this final rule to include that service bulletin as an additional appropriate source of service information for accomplishing the modification. However, regarding future upgrades of the OPS of the ADIRU per the issuance of future service information; we cannot accept as-yet unpublished service documents for compliance with the requirements of an AD. Referring to an unavailable service bulletin in an AD to allow operators to use later revisions of the referenced documents (issued after publication of the AD) violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, under the provisions of paragraph (g) of this AD, affected operators may request approval to use a later revision of the referenced service bulletin as an AMOC.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the change described previously. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 409 airplanes of the affected design in the worldwide fleet. This AD affects about 130 airplanes of U.S. registry. The actions take about 1 work hour per airplane, at an average labor rate of \$65 per work hour. Required parts are free of charge. Based on these figures, the estimated cost of the AD for U.S. operators is \$8,450, or \$65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–10–03 Boeing: Amendment 39–14080. Docket No. FAA–2005–20081; Directorate Identifier 2004–NM–132–AD.

Effective Date

(a) This AD becomes effective June 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as listed in Boeing Service Bulletin 777–34A0082, Revision 1, dated December 19, 2002.

Unsafe Condition

(d) This AD was prompted by a report of the display of erroneous heading information to the pilot due to a defect in the operational program software (OPS) of the air data inertial reference unit (ADIRU). The Federal Aviation Administration is issuing this AD to prevent the display of erroneous heading information to the pilot, which could result in loss of the main sources of attitude data, consequent high pilot workload, and subsequent deviation from the intended flight path.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 6 months after the effective date of this AD: Modify the OPS of the ADIRU by doing the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 777–34A0082, Revision 1, dated December 19, 2002, or Boeing Service Bulletin 777–34–0094, dated June 10, 2004.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(h) You must use Boeing Service Bulletin 777–34A0082, Revision 1, dated December 19, 2002; or Boeing Service Bulletin 777–34–0094, dated June 10, 2004; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401,

Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on April 29, 2005.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 05-9198 Filed 5-10-05; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

RIN 3038-AC24

Revision of Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending Commission regulation 150.2 to increase the speculative position limit levels for all single-month and all-months-combined positions subject to such limits. In addition, the Commission is making other clarifying amendments concerning the aggregation of positions when a Designated Contract Market (DCM) trades two or more contracts with substantially identical terms, and is deleting several obsolete provisions in part 150 that relate to contracts that are no longer listed for trading or to DCMs that no longer exist.

DATES: Effective June 10, 2005.

FOR FURTHER INFORMATION CONTACT:

Clarence Sanders, Attorney, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone (202) 418-5068, facsimile number (202) 418-5507, electronic mail csanders@cftc.gov; or Martin Murray, Economist, Division of Market Oversight, telephone (202) 418-5276, facsimile number (202) 418-5507, electronic mail mmurray@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2005 (70 FR 12621), the Commission published proposed amendments to Commission regulation 150.2 to increase the speculative

position limit levels for single-month and all-months-combined positions for CBT Corn, Oats, Soybeans, Wheat, Soybean Oil, and Soybean Meal; MGE Hard Red Spring Wheat; KCBT Hard Winter Wheat, and NYBOT Cotton No. 2.¹ The spot month limits for all of these commodities would remain unchanged. The Commission also proposed to clarify in regulation 150.2 its practice of aggregating traders' positions for purposes of ascertaining compliance with Federal speculative position limits when a DCM lists for trading two or more contracts with substantially identical terms based on the same underlying commodity characteristics. Finally, the Commission proposed to delete several obsolete provisions in part 150 that relate to contracts that are no longer listed for trading or to DCMs that no longer exist.²

II. Final Rules

The Commission is adopting as final rules without additional amendment the revisions to the speculative position limit levels that were set forth in the proposed rulemaking. This action is based upon its experience in administering these limits and after carefully considering the comments received in response to the notice of proposed rulemaking.

Thirteen comment letters were received in response to the proposed rulemaking, all but one of which was in favor. Favorable comments were submitted by representatives of agricultural trade or producer organizations, in particular the American Farm Bureau Federation (AFBF) and the National Farmers Union (NFU) who filed a joint statement, the National Grain Trade Council, and the National Grain and Feed Association; two DCMs, the Minneapolis Grain Exchange and the Chicago Board of Trade; and several entities representing the views of hedge fund managers, particularly the Managed Funds Association, Eclipse Capital, Campbell & Company, Rotella Capital Management, Chesapeake Capital Corporation, John W. Henry & Co., and

¹ Commission regulation 150.2 imposes three types of position limits for each specified contract: a spot-month limit, a single-month limit that applies to each non-spot month, and an all-months-combined limit.

² Commission regulation 150.2 currently includes Federal speculative position limits for agricultural commodities traded on the MidAmerica Commodity Exchange (MidAm) and for the white wheat futures contract traded on MGE. These provisions relating to the MidAm and the MGE white wheat futures contract are obsolete and will be repealed as part of this action. In addition, reference to the New York Cotton Exchange is being changed to NYBOT to reflect a change in corporate organization.

Graham Capital Management. Most of the favorable comments supported the proposed higher limits as a desirable interim step towards the ultimate abolition of Federal limits, although the AFBF and NFU supported both the higher limits and the continued retention of Federal limits indefinitely. In this regard, as the Commission noted in its proposed rulemaking, while the Commission has determined at this time to retain Federal speculative position limits at the increased levels contained herein, the Commission intends to continue its review of its current policies regarding the administration of speculative position limits, including a further evaluation of the merits of retaining Federal speculative limits.

The American Cotton Shippers Association (ACSA) opposed the proposed increase in the single-month and all-months combined limits for cotton. In particular, ACSA noted that the NYBOT has proposed, in consultation with its cotton committee, the establishment of its own, exchange-set speculative position limits for the cotton No. 2 futures and option contracts. The NYBOT's proposed limits of 2,500 futures-equivalent contracts for single months and 4,000 futures-equivalent contracts for all months combined are lower than those to be adopted by the Commission in this rulemaking. Accordingly, ACSA expressed the view that the Commission should adopt in part 150 of the Commission's regulations the NYBOT's proposed lower levels.³

The Commission has taken this view into account but nevertheless believes that the limit levels it has proposed for the NYBOT cotton No. 2 futures and option contracts under part 150 of the Commission's regulations are appropriate and that no change from its proposed rulemaking is necessary for several reasons. First, the Commission has applied consistent criteria in setting Federal speculative limits for all commodities subject to those limits, and it believes that it should continue this policy. Accordingly, the all-months-combined speculative position limit levels adopted herein, including the limit for the cotton No. 2 futures contract, were set according to the Commission's long standing and well-established formula that takes into

³ In an August 3, 2004, letter, the NYBOT submitted for Commission approval proposed speculative position limit rules for the cotton No. 2 futures and option contracts pursuant to Section 5c(c)(2) of the Commodity Exchange Act, and Commission regulation 40.4. At that time, the NYBOT also agreed to extend the Commission's time to review and approve the amendments until such time as the Commission should implement amendments to Commission regulation 150.2.

account open interest levels in the underlying futures and option markets, and the single-month levels adopted herein for each commodity were set to maintain the existing ratio between all-months-combined and single-month levels. In addition, the Commission notes that most comments made to the proposed rulemaking endorsed the Commission's approach for setting the single-month and all-months-combined speculative position limit levels. Finally, the Commission notes that DCMs may set speculative position limits at levels lower than Commission-specified levels, and that such lower levels would necessarily apply to all position holders. Thus, for the cotton No. 2 contracts, the applicable limits would be the lower levels that the NYBOT proposes to adopt, consistent with the comments expressed by the ACSA. In this regard, it is the Commission's expressed policy to review and approve, where appropriate, all speculative position limit provisions adopted by DCMs, and furthermore that a violation of contract market position limits that have been approved by the Commission is also a violation of section 4a(e) of the Act.⁴

In addition, the Commission is making other clarifying amendments concerning the aggregation of positions when a Designated Contract Market (DCM) trades two or more contracts with substantially identical terms. No comments were received in opposition to this clarification.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires Federal agencies, in proposing rules, to consider the impact of those rules on small businesses. The Commission believes that the rule amendments to raise Commission speculative position limits would only impact large traders. The Commission has previously determined that large traders are not small entities for purposes of the RFA.⁵ Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The Commission also notes in this regard that the final rules will raise speculative limit levels and thereby reduce the regulatory burden on all affected entities.

B. Paperwork Reduction Act

The final rule and its associated information collection requirements have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), under control numbers 3038-0009 and 3038-0013. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In the notice of

proposed rulemaking, the Commission estimated the paperwork burden that would be imposed by the rules and sought comments on the estimates. No comments were received in response to this request.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Commodity futures, Cotton, Grains, Position limits, Spread exemptions.

■ In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, the Commission hereby proposes to amend part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

■ 1. The authority citation for part 150 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, and 12a(5), as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

■ 2. Section 150.2 is revised to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

SPECULATIVE POSITION LIMITS

[In contract units]

Contract	Spot month	Single month	All months
Chicago Board of Trade			
Corn and Mini-Corn ¹	600	13,500	22,000
Oats	600	1,400	2,000
Soybeans and Mini-Soybeans ¹	600	6,500	10,000
Wheat and Mini-Wheat ¹	600	5,000	6,500
Soybean Oil	540	5,000	6,500
Soybean Meal	720	5,000	6,500
Minneapolis Grain Exchange			
Hard Red Spring Wheat	600	5,000	6,500
New York Board of Trade			
Cotton No. 2	300	3,500	5,000
Kansas City Board of Trade			
Hard Winter Wheat	600	5,000	6,500

¹ For purposes of compliance with these limits, positions in the regular sized and mini-sized contracts shall be aggregated.

⁵ 47 FR 18618 (April 30, 1982).

⁴ See Appendix B to part 38 of the Commission's regulations, pertaining to Acceptable Practices under Core Principle 5 for DCMs.

Issued by the Commission this 6th day of May, 2005, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05-9383 Filed 5-10-05; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 150

[USCG-2005-21111]

RIN 1625-AA00

Safety Zone; Gulf Gateway Deepwater Port, Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is establishing an interim safety zone around the primary component of the Gulf Gateway Deepwater Port, Gulf of Mexico, and its accompanying systems. The purpose of this safety zone is to protect vessels and mariners from the potential safety hazards associated with deepwater port operations. All vessels, with the exception of deepwater port support vessels, are prohibited from entering into or moving within this safety zone.

DATES: This interim rule is effective May 11, 2005. Comments and related material must reach the Docket Management Facility on or before July 11, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [USCG-2005-21111]. Docket information can be examined on the Department of Transportation docket management system Web site at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander (LCDR) Kevin Tone, Coast Guard Office of Operating and Environmental Standards, at (202) 267-0226, e-mail: ktone@comdt.uscg.mil. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202-366-0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All

comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG-2005-21111), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://dms.dot.gov> at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since there is not sufficient time to publish a proposed

rule in advance of the next transfer operation and immediate action is needed to protect persons and vessels against the hazards associated with deepwater port operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. While there is a 60 day public comment period, delaying its effective date would be contrary to public interest since immediate action is needed to respond to the potential hazards posed to local marine traffic and personnel involved in maritime operations by deepwater port operations.

Background and Purpose

The Gulf Gateway Deepwater Port (DWP) is located approximately 116 miles off the Louisiana coast at West Cameron Area, South Addition Block 603 "A", 28°05'16" N, 093°03'07" W. The DWP operator plans to offload liquefied natural gas (LNG) vessels by regasifying the LNG on board vessels. The regasified natural gas is then transferred through a submerged loading turret buoy (STL), to a flexible riser leading to a seabed pipeline to a metering platform. From the platform the natural gas feeds into two separate downstream seabed pipelines to connect with the Southeastern United States natural gas network. In order to improve safety and security at the port while regasification and transfer operations are occurring, several routing measures have been implemented. In July 2004, the Coast Guard forwarded a proposal to the International Maritime Organization (IMO) requesting the establishment of an Area To Be Avoided (ATBA) and a mandatory No Anchoring Area for the Excelerate Gulf Gateway (formerly the El Paso Energy Bridge) deepwater port. These two routing measures will promote safety, security, and vessel traffic management in the vicinity of the DWP.

The ATBA has a radius of 2 nautical miles, is recommendatory in nature and does not restrict vessels from transiting the area. However vessel operators are strongly urged to seek alternate routes outside the ATBA and away from the DWP. The No Anchoring Area has a radius of one and one half nautical miles from the STL buoy and compliance is mandatory. It is required to protect the anchoring system securing the port and vessels from potential damage by sub-surface fishing operations (e.g., trawling). These routing measures were adopted by IMO in December 2004 and will be implemented on July 1, 2005. A safety

zone is an additional measure, intended to augment the routing measures cited in the previous paragraph. The safety zone is needed to protect the deepwater port, and other vessels and mariners from the potential safety hazards associated with LNG operations while an LNG vessel is moored at the port.

Discussion of Rule

The Coast Guard is establishing an interim safety zone 500 meters around the Gulf Gateway Deepwater Port described above. All unauthorized vessels are prohibited from entering into or moving within this safety zone.

This rule is effective upon publication in the **Federal Register**.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This safety zone is encompassed within a circle that extends out only 500 meters from the center point, and is located approximately 116 miles off the coast of Louisiana, so the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the high seas in the vicinity of the deepwater port. The impact on small entities is expected to be minimal for the reasons enumerated in the *Regulatory Evaluation* section of this rule.

If you are a small business entity and are significantly affected by this regulation please contact Lieutenant Commander (LCDR) Kevin Tone, Coast Guard Office of Operating and Environmental Standards, at (202) 267–0226.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under the Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (4321–4370f).

NEPA sets forth a national policy that encourages and promotes productive harmony between man and the environment. NEPA procedures require that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The NEPA process is intended to help public officials to make decisions that are based on an understanding of environmental consequences and take actions that protect, restore and/or enhance the environment.

The USCG and the MARAD are responsible for processing license applications to own, construct, and operate deepwater ports. To meet the requirements of NEPA, the Coast Guard prepared an Environmental Assessment (EA) for this deepwater port project.

The EA assessed the potential environmental impacts associated with the installation, and operation of the deepwater port, the offshore pipelines and the future decommissioning of the deepwater port. The EA also assessed the alternatives considered for the deepwater port location, type of port (e.g., fixed or mobile structure), offshore pipelines as well as alternative technologies.

The primary purposes of the EA were to:

(1) Provide an environmental analysis sufficient to support the Maritime Administrator's licensing decisions;

(2) Facilitate a determination of whether the Applicant has demonstrated that the Proposed Deepwater Port would be located, constructed, operated, and decommissioned in a manner that represents the best available technology necessary to prevent or minimize any adverse effects on marine, coastal, and onshore environments;

(3) Aid the USCG's and the MARAD's compliance with National Environmental Policy Act (NEPA); and

(4) Facilitate public involvement in the decision-making process.

The final EA is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 150 as follows:

PART 150—DEEPWATER PORTS: OPERATIONS

■ 1. The authority citation for part 150 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).

■ 2. Add § 150.940(b) to read as follows:

§ 150.940 Safety zones for specific deepwater ports.

* * * * *

(b) *The Gulf Gateway Deepwater Port (GGDWP)*

(1) *Description.* The GGDWP safety zone is centered at the following coordinates: 28°05'16" N, 093°03'07" W. This safety zone, encompassed within a circle having a 500 meter radius around the primary component of the Gulf Gateway Deepwater Port, the submerged loading turret (buoy) and the pipeline end manifold (STL/PLEM), is located approximately 116 miles off the Louisiana coast at West Cameron Area, South Addition Block 603 "A".

(2) *Regulations.* Deepwater port support vessels desiring to enter the safety zone must contact and obtain permission from the LNG Regasification Vessel (LNGRV) stationed at the deepwater port. The LNGRV can be contacted on VHF–FM Channel 13.

Dated: May 4, 2005.

B.M. Salerno,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Marine, Safety, Security & Environmental Protection.

[FR Doc. 05–9432 Filed 5–6–05; 4:09 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0118; FRL–7713–4]

Dimethenamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of dimethenamid

in or on horseradish. The Interregional Research Project No. 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). In addition, this regulatory action is part of the tolerance reassessment requirements of section 408(q) of FFDCA, 21 U.S.C. 346a(q), as amended by the FQPA of 1996. By law, EPA is required to reassess all tolerances in existence on August 2, 1996 by August 2006. This regulatory action will count towards this August 2006 deadline. This regulation establishes a maximum permissible level for residues of dimethenamid in this food commodity. EPA has previously published all relevant scientific conclusions and analysis related to this tolerance action. Due to an inadvertent oversight, a final rule published in the **Federal Register** on September 24, 2004, which outlined EPA action to establish several tolerances for residues of dimethenamid on various commodities, including horseradish, did not contain necessary information in a table to actually add the tolerance for dimethenamid residues on horseradish into 40 CFR 180.464. This action corrects that error.

DATES: This regulation is effective May 11, 2005. Objections and requests for hearings must be received on or before July 11, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0118. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

II. Background and Statutory Findings

In the **Federal Register** of March 12, 2003 (68 FR 11850) (FRL-7295-9), EPA

issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP OE6196) by Interregional Research Project No. 4 (IR-4), Technology Center of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway 1 South, North Brunswick, NJ 08902-3390. The petition requested that 40 CFR 180.464 be amended by establishing a tolerance for residues of the herbicide dimethenamid, (R,S)-2-chloro-N-[(1-methyl-2-methoxy) ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide, in or on various commodities including horseradish (the other commodities were: Onions [dry bulb], garlic, shallots [dry bulb], tuberous and corm vegetables, sugar beets and garden beets) at 0.01 parts per million (ppm). That notice included a summary of the petition prepared by IR-4, the registrant. There were no comments received in response to the notice of filing.

EPA took action on this tolerance petition in the **Federal Register** of September 24, 2004 (69 FR 57197) (FRL-7680-1). The final rule published by EPA on September 24, 2004, discussed in detail the findings of EPA's scientific and regulatory review of the request to establish a tolerance for residues of dimethenamid on onions [dry bulb], garlic, shallots [dry bulb], tuberous and corm vegetables, sugar beets, garden beets and horseradish at 0.01 ppm. As outlined in that final rule, EPA has concluded that a tolerance can be established at that level on those crops, and in reaching that conclusion EPA took action to establish those tolerances. However, in the final table of that September 24, 2004 final rule, which directly modifies the contents of 40 CFR 180.464, a listing of horseradish was inadvertently not included. Without including a line for horseradish in that final table, the tolerance for horseradish was not added to 40 CFR 180.464. Today's action completes EPA's action on the March 2003 petition by establishing the dimethenamid tolerance on horseradish.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include

occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....”

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of dimethenamid on horseradish at 0.01 ppm.

The action being taken by EPA in this regulatory action is to correct that oversight and formally revise 40 CFR 180.464 to include the tolerance on horseradish as requested in the March 2003 petition. Refer to the September 24, 2004 **Federal Register** final rule for a detailed discussion of the aggregate risk assessments and determination of safety that were conducted in support of the tolerance-setting action for dimethenamid and horseradish. EPA relies upon those risk assessments and the findings made in the September 24, 2004 **Federal Register** final rule in support of the current action being taken.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of September 24, 2004 (69 FR 57197) (FRL-7680-1), EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to dimethenamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (AM-0884-0193-1) is available to enforce the tolerance expression. AM-0884-0193-1 is a GC method using an HP-1 or HP-5 column and mass selective

detection (MSD). The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no Codex maximum residue levels (MRL's) for dimethenamid.

C. Conditions

There are no conditions of registration for the establishment of tolerances on horseradish.

V. Conclusion

Therefore, the tolerance is established for residues of dimethenamid, (R,S)-2-chloro-N-[(1-methyl-2-methoxy) ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide, in or on horseradish at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0118 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 11, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the

objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in ADDRESSES. Mail your copies, identified by docket ID number OPP-2005-0118, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in ADDRESSES. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility

that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.464 is amended by revising the section heading and alphabetically adding a commodity to the table in paragraph (a) to read as follows:

§ 180.464 Dimethenamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Horseradish	0.01
* * *	* *

[FR Doc. 05-9399 Filed 5-10-05; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 25, and 90

[ET Docket No. 04-151, WT Docket No. 05-96, ET Docket No. 02-380, and ET Docket No. 98-237; FCC 05-56]

Wireless Operations in the 3650-3700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopted rules that provide for nationwide, non-exclusive, licensing of terrestrial operations, utilizing technology with a

contention-based protocol, in the 3650-3700 MHz band (3650 MHz) band. It also adopted a streamlined licensing mechanism with minimal regulatory entry requirements that will encourage multiple entrants and stimulate the rapid expansion of wireless broadband services—especially in rural America—and will also serve as a safeguard to protect incumbent satellite earth stations from harmful interference. The Report and Order (R&O) established licensing, service and technical rules that allow fixed and base-station-enabled mobile terrestrial operations. Finally, the R&O maintained the existing Fixed Satellite Service (FSS) and Fixed Service (FS) allocations and modified the Mobile Service (MS) allocation to delete the restriction against mobile operations in the 3650 MHz band. The R&O also maintained the international/intercontinental operation requirements for FSS earth stations.

DATES: Effective June 10, 2005, except for 47 CFR 90.203(o), 90.1323, which contain information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, Office of Engineering and Technology, (202) 418-2290, or Eli Johnson, 418-1395, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order, and Memorandum Opinion and Order* ET Docket No. 04-151, ET Docket No. 02-380, ET Docket No. 98-237, WT Docket No. 05-96, FCC 05-56, adopted March 10, 2005 and released March 16, 2005. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; e-mail FCC@BCPIWEB.COM.

Summary of the Report and Order

1. The Report and Order (R&O), adopted rules that provide for nationwide, non-exclusive, licensing of terrestrial operations, utilizing technology with a contention-based

protocol, in the 3650–3700 MHz band (3650 MHz) band. The Commission also adopted a streamlined licensing mechanism with minimal regulatory entry requirements that will encourage multiple entrants and stimulate the rapid expansion of wireless broadband services—especially in rural America—and will also serve as a safeguard to protect incumbent satellite earth stations from harmful interference. The Commission established licensing, service and technical rules that allow fixed and base-station-enabled mobile terrestrial operations. Finally, the Commission maintained the existing Fixed Satellite Service (FSS) and Fixed Service (FS) allocations and modified the Mobile Service (MS) allocation to delete the restriction against mobile operations in the 3650 MHz band. The R&O also maintained the international/intercontinental operation requirements for FSS earth stations.

2. The Commission affirmed its belief that the 3650 MHz band is well-suited to respond to the needs expressed by the growing number of entrepreneurial wireless internet service providers (WISPs), that currently bring broadband services to consumers, particularly those living in rural areas of the United States. Today, rural consumers often have fewer choices for broadband services than consumers in more populated areas. The licensing scheme that has been adopted for this band will provide an opportunity for the introduction of a variety of new wireless broadband services and technologies, such as WiMax. Furthermore, the decisions adopted in the R&O will allow further deployment of advanced telecommunications services and technologies to all Americans, especially in the rural heartland, thus promoting the objectives of Section 706 of the Telecommunications Act of 1996.

3. In the Memorandum Opinion and Order (MO&O), the Commission addressed several petitions for reconsideration and a motion for stay that were filed in response to the First Report and Order (3650 MHz Allocation Order) in ET Docket No. 98–237, 65 FR 69451, November 11, 2000. The Commission denied the petitions for reconsideration, and it also denied the emergency motion for stay.

4. In April 2004, the Commission released the Notice of Proposed Rulemaking (*Unlicensed Operation NPRM*, or *NPRM*), 69 FR 26790, May 14, 2004, and proposed to allow the operation of unlicensed devices in the 3650 MHz band. In the *NPRM*, the Commission tentatively concluded that permitting unlicensed devices to operate in the band would be the most

beneficial approach, but also sought comment on alternative licensed approaches as well.

5. The Commission noted that the record clearly supports use of the 3650 MHz band for a variety of FS and MS operations. The Commission concluded that it would serve the public interest to maintain primary FS and MS allocations and a secondary FSS allocation in the band and to devise a regulatory scheme that provides flexibility for a variety of new terrestrial uses. Further, it noted that the public interest would best be served by establishing minimal regulatory barriers to encourage multiple entrants in the 3650 MHz band and to stimulate the rapid expansion of broadband services—especially in America's rural heartland. At the same time, the Commission must ensure that incumbent grandfathered satellite earth stations and Federal Government radiolocation stations in this band are protected from harmful interference.

6. To accomplish these objectives, the Commission concluded that new terrestrial operations in the band should be licensed on a nationwide, non-exclusive basis, with all licensees registering their fixed and base stations in a common database. This streamlined licensing and registration process will provide additional spectrum to WISPs and other potential users suitable for backhaul and other broadband purposes such as community networks—at low entry costs and with minimal regulatory delay. While terrestrial licensees in this band will not have interference protection rights of primary, exclusive use licensees, the licensing scheme imposes on all licensees the mutual obligation to cooperate and avoid harmful interference to one another.

7. To ensure efficient and cooperative shared use of the spectrum, the Commission further required all terrestrial operations in the 3650 MHz band to use technology that includes a contention-based protocol. Such systems allow multiple users to share the same spectrum by defining the events that must occur when two or more devices attempt to simultaneously access the same channel and establishing rules by which each device is provided a reasonable opportunity to operate. Under this approach, terrestrial operations can operate in geographic areas of their own choosing and, because a contention-based protocol will control access to spectrum, terrestrial operations will avoid interference that could result from co-frequency operations. Interference caused by radiofrequency (RF) energy from a fixed or base station transmitter into a nearby fixed or base station

receiver will be addressed by the process the Commission adopted to register fixed and base stations so that they can operate at locations and with technical parameters that will minimize the potential for interference between stations. By requiring use of contention-based technologies, the Commission concluded that it does not have to limit terrestrial operations to outdoor-only or adopt other limiting measures to address possible contention among these new operations. The Commission also concluded that a contention-based protocol will allow the band to be used for a variety of base-station-enabled mobile terrestrial operations, thus providing additional flexibility in the use of the band, as many commenters requested.

8. The Commission concluded that licensing and registration of terrestrial fixed and base stations will also enable them to be easily identified and located to ensure the protection of incumbent FSS earth stations and Federal Government radiolocation stations. Under the approach adopted, new terrestrial operations will have to protect satellite earth station receive-mode operations and Federal Government radiolocation stations in the 3650 MHz band in substantial areas of the country. To simplify this process, the Commission established protection zones around the grandfathered FSS earth stations, similar to the protection areas already designated around the grandfathered radiolocation stations. New terrestrial operations are to avoid operating within these zones, but the Commission will allow new terrestrial operations to negotiate agreements with earth station operators for operations within these protection zones. The technical requirements the Commission placed on fixed and mobile operations, along with our licensing/registration regime, should allow as much flexibility as technically possible at this point, and both prevent interference to the protected earth stations and facilitate the quick resolution of any interference issues that may arise.

9. In short, the actions taken in the R&O for the 3650 MHz band should facilitate the rapid deployment of advanced telecommunications services and technologies to all Americans, thus promoting the objectives of Section 706 of the Telecommunications Act of 1996.

Allocation Issues

10. The Commission also maintained the existing FSS and FS allocations in the 3650 MHz band and modified the MS allocation to remove the “base station only” restriction. These allocations should ensure that the

potential widespread use of the band by new terrestrial operations will not be impeded by the introduction of new co-primary FSS earth stations.

11. As proposed in the *NPRM*, the Commission retained the international/intercontinental operating requirement on FSS earth stations by deleting the reference in the Table of Allocations to footnote U.S. 245 in the 3650 MHz band, and recasting it as a new “NG” footnote specifically for the 3650 MHz band. As noted in the *NPRM*, the Commission concluded that deletion of this restriction could result in more extensive FSS use and further curtail the use of this band by terrestrial operations. Finally, by providing for streamlined licensing of terrestrial operations under the existing allocations in the 3650 MHz band, the Commission resolved the questions posed in the *NPRM* regarding segmentation of the band. Among other benefits, the licensing approach the Commission adopted avoids splitting the band between licensed and unlicensed terrestrial operations, thus making the full 50-megahertz of spectrum in the 3650–3700 MHz band more attractive to potential service providers.

Licensing Provisions

12. The Commission believed that a non-exclusive nationwide licensing scheme, coupled with a fixed and base station registration requirement, will ensure open access to this spectrum for nominal application fees and allow effective and efficient use of this spectrum in response to market forces. This should allow opportunities for rapid deployment of broadband technologies and will advance our goal of bringing broadband services to all Americans including consumers living in less densely populated rural and suburban areas. The Commission also believed that the use of contention-based technologies will allow efficient use of this spectrum by multiple users without significant degradation of service. Thus, the Commission concluded that it is appropriate and in the public interest to have a licensing scheme that facilitates the sharing of this spectrum among multiple users. Such an approach will also allow licensees in this spectrum maximum flexibility to evolve their systems to meet uncertain future needs and requirements.

13. The Commission emphasized that the adopted licensing requirements for wireless operations in the 3650 MHz band are minimal in nature. The record in this proceeding indicated that service providers who typically operate on an

unlicensed basis under our part 15 of the Commission’s rules are interested in using this spectrum for the development of wireless broadband services, particularly in underserved and rural communities. The Commission did not impose any eligibility restrictions other than the foreign ownership restriction imposed by statute. The Commission also did not impose any in-band or out-of-band spectrum aggregation limits. As a result, the Commission noted, this band will be open to all potential wireless service providers, including those with limited resources.

14. While the licensing and registration requirements adopted for wireless broadband operations in the 3650 MHz band are minimal in nature, the Commission found that they nevertheless provide benefits to licensees and the public. For example, these requirements will ensure that all terrestrial wireless systems operating in the 3650 MHz band are identified, which should facilitate cooperation among users and ensure that the Commission can monitor the development and usage of this spectrum. Furthermore, while terrestrial licensees in this band will not have interference protection rights of primary, exclusive use licensees, the licensing scheme imposes on all licensees the mutual obligation to cooperate and avoid harmful interference to one another. Should a licensee become aware of harmful interference, even if not intentionally caused, it must act in good faith to help eliminate the interference. In addition, this licensing approach will protect grandfathered FSS earth station and Federal Government operations that will continue to operate in the band on a primary basis. In addition, under the licensing scheme adopted, two principal concerns identified by commenters—the need for high power operations and the need to identify users operating in this band—will be met. Further, the licensing scheme adopted will allow the Commission the opportunity to obtain contact information, should the need arise. Further, site registration will facilitate voluntary interference avoidance and mitigation efforts among users and enable both the Commission and the public to monitor the intensity of spectrum usage in the band.

15. The Commission recognized that some commenters advocated exclusive licensing for the 3650 MHz band. However, the Commission believed that on balance, the non-exclusive licensing approach adopted in the R&O, combined with technical safeguards, is more suitable to the unique characteristics of this band. The

Commission explained that although a non-exclusive approach may require voluntary coordination efforts to avoid in-band terrestrial interference, the licensing regime adopted in the R&O obligates licensees to cooperate to avoid harmful interference, and makes the information necessary to conduct such coordination available via a site registration database. Some commenters have also raised contention as an issue; the record indicated that this band is well-suited for high power broadband operations using contention-based technologies that facilitate sharing. The Commission believed that the licensing scheme and technical rules adopted will result in investments in this band. In addition, because of the limitations on the use of this band in coastal areas near FSS earth stations, and because of the lack of obvious pairing opportunities with other spectrum bands for duplex operations, much of the interest in development of the band is focused on smaller markets and less densely populated areas of the U.S. where there is less likelihood of congestion and interference. Even in those larger markets that will be open for terrestrial use, the Commission believed that licensees in the band will have the incentive to develop spectrum sharing practices based on the use of contention-based technologies that will promote efficient use of the band. In short, the Commission believed that its decision struck the best balance for all the competing interests in a manner that best serves the public interest.

Nationwide Non-Exclusive Licensing

16. Under the rules adopted by the Commission, each terrestrial licensee in the 3650 MHz band will have a non-exclusive nationwide license and be required to register its fixed and base stations. The licensee will be allowed to register all of its fixed and base stations under one license. A non-exclusive nationwide wireless license does *not* authorize operation of a fixed or base station in this band until that station is registered. Each wireless licensee will be authorized to operate on all 50 megahertz of the 3650 MHz band on a co-primary basis with other wireless licensees, and there will be no spectrum aggregation limits. As a result, wireless licensees in the 3650 MHz band will be able to use as much of this spectrum as needed for their operations as long as they comply with all applicable licensing, service, and operating rules. All wireless licensees in the 3650 MHz band will have equal rights to the use of this spectrum (*i.e.*, no priority for first-in users), but all these licensees will have a mutual obligation to

cooperate and avoid harmful interference to one another.

17. Applicant qualification for non-exclusive nationwide wireless licenses in the 3650 MHz band will be assessed in accordance with FCC Form 601 and Commission rules. There will be no limit to the number of non-exclusive nationwide wireless licenses that may be granted for this spectrum, and these licenses will serve as a prerequisite for registering individual fixed or base stations. The Commission notes that registration process is simple and streamlined. It will be done electronically. The initial filing date for these wireless licenses, along with directions on how to use the Universal Licensing System (ULS), will be announced in a future Wireless Telecommunications Bureau (WTB) Public Notice. The Commission notes that in order to keep the ULS licensing and registration data base accurate and up-to-date, it delegates to the WTB the authority to adopt rules regarding the reporting of data base information including reporting of any license or station transfers. The WTB will issue a Public Notice seeking comment on these issues, if needed.

Other Licensing Provisions

18. The *3650 MHz Service Rules NPRM* sought comment on licensing, operating and service rules related to wireless operations in the 3650 MHz band. In our subsequent *Unlicensed NPRM*, the Commission sought to refresh the record on these issues. The Commission addressed these issues in terms of how they relate to the non-exclusive nationwide licensing scheme with fixed and base station registration provisions for this spectrum.

19. *Rule Part and Regulatory Status.* The *3650 MHz Service Rules NPRM* sought comment on the rule part that should be utilized to govern wireless operations and services in the 3650 MHz band and noted that wireless broadband service licensees in the 3650 MHz band could be subject to other rule parts depending on the types of operations and services that they offered. Upon consideration of the record and given the non-exclusive nationwide nature of the licenses in the 3650 MHz band, the Commission decided to place the licensing, service, and operation provisions for this spectrum under a new subpart that will be entitled "3650 MHz Wireless Broadband Services," created in the existing part 90 of its rules. This rule part already contains licensing, service and operating provisions for the private land mobile radio (PLMR) services, including services that operate on

certain frequencies on a shared use basis. As with wireless services in the 3650 MHz band, this means that multiple licensees in these shared use bands operate on the same frequencies in the same geographic areas without exclusive spectrum usage rights and interference protections.

20. Licensees in the 3650 MHz band may provide services on a common carrier or non-common carrier basis and will have flexibility to designate their regulatory status based on any services they choose to provide. Wireless licensees in the 3650 MHz band will be able to provide all allowable services anywhere within their service area at any time, consistent with whatever regulatory status they choose.

21. While wireless licensees in the 3650 MHz band will be subject to specific licensing and operating provisions adopted in the R&O, other rules may also apply to these licensees depending on the type of service they provide. For instance, if a wireless licensee provides Commercial Mobile Radio Services (CMRS), which makes the licensee a common carrier, other obligations attach as a result of that decision under Title II of the Communications Act or the Commission's rules (e.g., universal service, CALEA).

22. *Spectrum Aggregation Limits, Eligibility, and Foreign Ownership Restrictions.* The *3650 MHz Service Rules NPRM* did not propose any in-band or out-of-band spectrum aggregation limits nor did it propose any eligibility restrictions on who can acquire a wireless license for this spectrum, other than the statutory foreign ownership restrictions. In this order, the Commission decided not to impose any spectrum aggregation limits, either in-band or out-of-band, or eligibility restrictions other than the statutory foreign ownership restrictions. All potential wireless service providers will have equal access to this band.

23. *License Term and Renewal Expectancy.* The *3650 MHz Service Rules NPRM* sought comment on a 10-year license term for wireless licenses in the 3650 MHz band and the standard that should be used for granting a renewal of that license. The Commission concluded that it is in the public interest to adopt a 10-year license term. The Commission's action is consistent with license terms adopted for other services including certain services in part 90. A ten-year license term will provide regulatory certainty and encourage investments in the band. At the end of 10 years, licensees will be required through ULS to renew their non-exclusive nationwide license for

wireless operations in the 3650 MHz band. Since there is no limit on the number of wireless licenses that will be granted for the 3650 MHz band, existing licensees can expect to receive license renewals as long as they are in compliance with the Commission's rules. In addition, renewal of a non-exclusive nationwide license will automatically renew registration of all fixed and base stations associated with that license.

24. *Performance Requirements.* The *3650 MHz Service Rules NPRM* sought comment on whether wireless licensees in the 3650 MHz band should be subject to any performance or build-out requirements. Build-out in this band will be driven by market demand and the ability to meet this demand will not be restricted by a limited number of wireless licenses or an exclusive licensing structure. As a result, the Commission found that there was no need to impose a performance or build-out requirement. Any interested party is free to meet this demand at any time, as long as it has a valid wireless license, registers its fixed and base stations, and complies with other applicable rules. Although the Commission did not impose a performance requirement, it required that licensees delete registrations for unused fixed and base stations in order to maintain database integrity and facilitate efficient coordination between licensees.

25. *Disaggregation, Partitioning, and Secondary Markets.* The *3650 MHz Service Rules NPRM* sought comment on whether wireless licensees in the 3650 MHz band should be able to partition their own service areas and disaggregate their respective spectrum. Typically, wireless licensees with exclusive licensing areas are permitted to partition and disaggregate and commenters supported allowing wireless licensees in the 3650 MHz band to be able to take advantage of these provisions.

26. The Commission found that its decision to license the 3650 MHz band for wireless services on a non-exclusive nationwide basis obviates the need to adopt partitioning and disaggregation provisions. Wireless licensees in the 3650 MHz band, however, may assign or transfer their non-exclusive nationwide licenses with all the fixed and base stations registered under those licenses. A licensee can transfer affixed or base station registered under its non-exclusive nationwide license to another non-exclusive nationwide licensee so long as the first licensee deletes the registered fixed or base station from its license and the second licensee registers the station under its license.

27. For similar reasons, the Commission concluded that it need not make its spectrum leasing rules applicable to wireless licensees in the 3650 MHz band. Accordingly, the spectrum leasing arrangements described in the *Secondary Markets Report and Order*, 68 FR 66252, November 25, 2003, are not applicable, and the Commission does not see a need to apply those spectrum leasing rules and policies to this spectrum at this time.

Statutory Compliance for Licensing Approach

28. The Commission's decision to adopt a licensing scheme that avoids mutual exclusivity comports with the competitive bidding approach set forth in the Commission's Balanced Budget Act proceeding. In the *BBA Report and Order*, 66 FR 33, January 2, 2001, the Commission established a framework for exercise of the Commission's auction authority, as expanded by the Balanced Budget Act. The *BBA Report and Order* affirmed that, in identifying which classes of licenses should be subject to competitive bidding, the Commission must pursue the public interest objectives set forth in section 309(j)(3). Although Balanced Budget Act did not amend section 309(j)(3)'s directive to consider certain public interest objectives in identifying classes of licenses and permits to be issued by competitive bidding, pursuant to that statute, section 309(j)(1) did include a reference to the Commission's obligation to avoid mutual exclusivity under section 309(j)(6)(E), which directs the Commission to use engineering solutions, negotiation, threshold qualifications, service regulations, or other means to avoid mutual exclusivity where it is in the public interest to do so. Accordingly, the *BBA Report and Order* affirmed that the Commission has a continuing obligation to attempt to avoid mutual exclusivity by the methods prescribed in section 309(j)(6) only when doing so furthers the public interest goals set forth in section 309(j)(3).

29. In adopting the appropriate licensing scheme for any particular spectrum band, the Commission has interpreted its statutory obligation in a manner consistent with the opinion of the U.S. Court of Appeals for the D.C. Circuit which stated, "Section 309(j)(6)(E) imposes an obligation only to minimize mutual exclusivity 'in the public interest' and 'within the framework of existing policies.'" The Commission's decision regarding the appropriate licensing scheme for this particular spectrum centers around the

unique characteristics of the 3650–3700 MHz band, including the need to protect grandfathered FSS earth station operations against harmful interference, the lack of pairing opportunities with other spectrum bands limiting the possibility of duplex operations, and the goal of enabling multiple users to share spectrum in the same geographic area without interference through the use of contention based technologies. As the record reflects, this band is well suited for high power broadband operations through such technology, and this approach is therefore likely to lead to the introduction of new and innovative broadband services in this band. With respect to the 3650 MHz band, the Commission determined that it serves the public interest and the Commission's policy objectives to promote the rapid deployment of broadband services to assign non-exclusive nationwide licenses for the use of this spectrum. Insofar as this licensing scheme will not result in mutual exclusivity, the use of competitive bidding is not required.

Technical Requirements

30. The Commission adopted the same magnitude of power limits for terrestrial operations proposed in the *NPRM*, but qualified the limit in terms of power density over a bandwidth. The Commission concluded that FSS protection zones that are somewhat modified from those proposed in the *NPRM* remain a viable tool for avoiding interference scenarios that might arise from FS/MS operations. The Commission concluded that mobile terrestrial operations could be accommodated while protecting grandfathered FSS and Federal Government stations so long as such operation is enabled by transmissions from a nearby fixed or base station. The Commission also concluded that technologies using a contention-based protocol are available that control access to spectrum and thereby mitigate the possibility of interference that could result from co-frequency operation of fixed and mobile stations, particularly in congested operating environments. In that connection, the Commission adopted equipment certification provisions to ensure that both fixed and mobile stations incorporate the requisite contention-based technologies. Interference caused by radiofrequency (RF) energy from a fixed or base station transmitter into a nearby fixed or base station received will be addressed by the process the Commission adopted to register fixed and base stations so that they can operate at locations and with technical parameters that will minimize

the potential for interference between stations. The Commission adopted out-of-band emission limits for terrestrial operations and specify criteria for operations in proximity to Canadian and Mexican borders. Finally, the Commission retained the same 80 km coordination zone already established in the rules for the protection of the three grandfathered Federal Government stations operating in the band.

31. The Commission decided to leave it up to the industry to determine flexible and efficient methods for meeting the technical requirements adopted. In particular, the Commission noted that industry would need to address issues such as contention-based protocols and base-station enabled mobile operations.

32. *Fixed Station Operating Power.* In the *NPRM*, the Commission proposed an EIRP limit of 25 Watts for fixed stations operating in the 3650 MHz band. The Commission adopted a *peak* power limit, expressed as a power density, of 25 Watts per 25 megahertz bandwidth, for the following reasons. First, the Commission noted that the majority of commenters generally support the use of 25 watts for fixed operations. Additionally, the Commission noted that the potential for a system to cause interference is related to bandwidth in addition to power. In this respect, the Commission recognized that different systems operating in the 3650–3700 MHz band may utilize various operating bandwidths. Consequently, the Commission believes that EIRP limits should be specified not simply as a maximum power, but rather in terms of power density (*i.e.*, power per unit of occupied bandwidth). By specifying the power limit in this way, protection of FSS earth stations is simplified because a single separation distance can be specified regardless of the bandwidth used. For example, a system using a bandwidth of 25 megahertz may use the full 25 Watts peak EIRP, but a system using only 1 megahertz bandwidth may only use 1 watt peak EIRP; in either case, the power density is equivalent. If the EIRP limit were not specified in this manner, a 1 megahertz system could use the full 25 watts, which, because all the power would be concentrated in a relatively small bandwidth, would result in much larger separation distances necessary to protect FSS earth stations, as compared to a system with 25 megahertz bandwidth. Therefore, the Commission adopted a fixed station peak power density of 25 Watts EIRP in any 25 megahertz band. Furthermore, to promote additional flexibility in system design, any combination of transmitter output power and antenna gain will be

permitted, so long as the peak 25 Watt/25 megahertz EIRP limit is not exceeded. The Commission believes that the power density requirement it adopted facilitates the goal of ensuring efficient use of the band. As detailed, this limit results in reasonably sized protection zones around FSS earth stations to maximize the area in which terrestrial licensees can operate while also providing enough power for these terrestrial operations to operate over sufficient ranges to provide service to a large number of users.

33. *Mobile station operations.* Mobile operations, including mobile-to-mobile, will be permitted under the rules we adopted in the R&O. The Commission noted, however, that mobile operations pose a greater risk of causing interference to FSS earth stations than fixed stations. Based on the record, the Commission concluded that, before it can transmit, a mobile station (including those operating in mobile-to-mobile mode) will be required to positively receive and decode an enabling signal transmitted by a base station. Thus, mere spurious emissions from other RF sources, such as another mobile transmitter, cannot enable a mobile to transmit. The Commission believes that this approach will ensure that spurious emissions from nearby devices will not inadvertently trigger the transmit ability of a mobile station. Furthermore, this approach will ensure that any mobile station will be within a reasonable distance of a base station and, thus, far from an FSS earth station (or federal government station) before it can transmit. The rules adopted will also allow for mobile-to-mobile operations. Beyond the basic requirement for the use of base station trigger, the Commission concluded that it should not adopt additional requirements regarding the characteristics of the signal needed to trigger mobile transmissions (e.g., signal level and content). Instead, the Commission decided to leave it up to the industry to determine flexible and efficient methods for meeting this requirement. The Commission noted, however, that meeting this requirement should not pose any undue burden upon manufacturers inasmuch as equipment deployed today already incorporates a similar mechanism.

34. *Mobile operating power.* In the NPRM, the Commission proposed to limit mobile devices to a peak EIRP of 1 Watt. Accordingly, the Commission concluded that a maximum peak EIRP of 1 Watt over a 25 megahertz bandwidth will provide a reasonable balance between interference protection goals and fostering the most flexible use

of mobile stations in the 3650 MHz band. In the same manner as the power limits for fixed stations, the Commission specified the mobile power limit in terms of bandwidth density in order to accommodate systems with various bandwidths while assuring predictable protection of incumbent stations. The Commission also noted that this power/bandwidth level is consistent with existing wireless mobile equipment operating in other bands, and with proposed wireless mobile systems under consideration by IEEE 802.16.

35. *Antennas.* In the NPRM, the Commission observed that sectorized and phased array antennas could be used to create highly spectrum efficient networks and could enable an application like a broadband local area network to serve a number of spatially separated clients from a single fixed antenna site. Such antennas allow systems to use spectrum more efficiently by making it possible to re-use a given frequency to communicate with different devices along non-overlapping paths. The Commission believes that allowing such flexibility encourages both new and novel antenna technologies that will foster more intensive spectrum use.

36. The Commission concluded that transmitters installed at fixed locations should not be prohibited from using any particular type of antenna design. As a general requirement, the EIRP in any antenna beam must be limited to 25 Watts per 25 megahertz. However, transmitters using sectorized, scanning spot-beam, or other antenna types with multiple beam capability shall be required to limit their EIRP in any direction to no more than the limit the Commission adopted for fixed systems (i.e., 25 Watts per 25 megahertz). Thus, the aggregate power transmitted simultaneously on overlapping beams will have to be reduced such that the EIRP in the area of overlap does not exceed the limit for a single beam. In addition, to allow flexibility in deployment of advanced antenna systems, including sectorized and adaptive array systems, the Commission will allow systems using these antennas to operate with an aggregate transmit output power transmitted simultaneously on all beams of up to 8 dB above the limit for an individual beam. The Commission believes that these rules will provide flexibility for licensees to employ a wide variety of advanced antennas to meet their needs while still ensuring protection to FSS earth stations. Applications for equipment authorization must include the algorithm that confirms that this requirement is met.

37. *Protection of terrestrial stations.* Under the licensing scheme being adopted for terrestrial transmitters in the 3650–3700 MHz band, it will be possible for both base and mobile stations to operate virtually anywhere—except near FSS earth stations and Federal stations. Mechanisms must therefore be in place to ensure operation on an interference-free basis. The Commission stated that it is concerned about two different kinds of interference in the 3650–3700 MHz band. The first could occur if the radiofrequency (RF) energy from a fixed or base station transmitter interferes with the performance of a nearby fixed or base station receiver. The second type of interference could take place if two or more stations are competing with each other for access to the spectrum. With regard to the former, the Commission will provide, at <http://wireless.fcc.gov/uls>, information regarding the location of all registered stations in the band. Parties seeking to register a new station should examine this database, and then make every effort to ensure that their station operates at a location, and with technical parameters, that would minimize the potential for mutual interference between both the new and existing stations.

38. The Commission believes the best way of preventing the second form of interference from occurring is to require systems operating in the 3650–3700 MHz band to incorporate a contention-based protocol. Such protocols can be characterized by having the following properties: Procedures for initiating new transmissions, procedures for determining the state of the channel (available or unavailable), and procedures for managing retransmissions in the event of a busy channel.

39. Systems using a contention-based protocol have been common for quite some time for both licensed and unlicensed systems. Because it is not according terrestrial licensees exclusive use of the spectrum in any area and because it desires to provide for widespread deployment of equipment, the Commission believes that a contention-based protocol is a reasonable, cost effective method for ensuring the ability of any user to access the spectrum. A contention based protocol also will have to ensure that all users will have a reasonable opportunity to operate, so that no operator can block others' access to the spectrum. Accordingly, the Commission required fixed, base and mobile equipment designed for use in the 3650 MHz band to incorporate some type of contention based protocol. Consistent with past

practice, the Commission did not specify a specific protocol, but left it to the industry and standards bodies to determine appropriate protocols. The incorporation of such a protocol will be a requirement of the equipment certification process, and equipment that appears to be designed to preclude others from using this spectrum will not be approved. In monitoring the use of this spectrum, the Commission noted that it remains free to modify the rules if there appears to be significant problems in this regard. The Commission also added a definition of contention-based protocol into the rules, see section 90.7.

40. *FSS Earth Station Protection.* Under the streamlined licensing approach adopted in the R&O, terrestrial FS/MS operations must continue to protect satellite earth stations that retain their primary status under our FSS grandfathering provisions for the 3650 MHz band. The Commission adopted circular protection zones of 150 km around the grandfathered earth stations. The Commission recognizes that the simplified circular protection zones that we are being imposed here employs a high degree of worst-case conservatism that, in many instances, could result in prohibiting the use of transmitters in less-than-worst-case circumstances where, in reality, there would be no likelihood of interference to FSS earth stations. To provide additional flexibility in the face of these conservative protection zones, the Commission determined that it will allow terrestrial operations within these protection zones, so long as they negotiate agreements with the earth stations operators.

41. The Commission adopted a registration requirement as an integral part of the streamlined licensing scheme for the 3650 MHz band. The Commission noted that this approach would ensure that the locations of all terrestrial users are known. To further assure that FSS earth stations are adequately protected, the Commission imposed the protection distance as a circular zone around the earth station. This differs from the proposal made in the NPRM of using a keyhole-like pattern based on the earth station pointing towards a specific satellite. The Commission made this decision because, in practice, each earth station can look at multiple satellites across the geostationary arc. Thus, a circular protection zone is more appropriate for ensuring interference protection in all cases. In addition, the Commission pointed out that using a circular zone has the benefit of simplicity for all parties as it is easy to determine exactly

which areas are excluded from terrestrial station operation.

42. Finally, the Commission noted that a more accurate determination of the requisite separation distances could be derived if the particular operating parameters of both the fixed terrestrial transmitter and protected FSS earth stations are taken into account. However, requiring operators to independently make detailed transmission path and link budget calculations could be unduly burdensome. The Commission recognized, however, that such operation within the conservative portion of the protection zone is possible, and thus will allow such operation so long as the FS station and the FSS station licensees mutually agree on appropriate operating parameters. An FS entity that requests to operate within the protection zone will be required to negotiate with each protected earth station that is potentially affected by the proposed fixed or mobile operation. Further, the FSS station licensee must not refuse to negotiate with the fixed licensee, and both parties should negotiate in good faith. The results of these negotiations must be documented and kept with the station's records in the event that the Commission needs this information.

43. *Equipment Authorization Requirements.* As discussed in the licensing sections of the R&O, the Commission adopted rules to license terrestrial operations in the 3650 MHz band under part 90 of its rules. In addition, the Commission noted that there already exists a general requirement for all equipment to obtain certification under that rule part. This requirement recognizes that there is a certain "core group" of equipment that requires a higher level of oversight than manufacturer's self-approval (Declaration of Conformance or Verification), due to a high risk of non-compliance, the potential to create significant interference to safety and other communication services, and the need to ensure compliance with the requirements to protect against radio frequency exposure. The Commission found that because of the risk of interference to FSS earth stations, equipment designed for operation in the 3650 MHz band falls into this "core group" of equipment. Thus, as with other part 90 equipment, the Commission required manufacturers to obtain certification for their equipment. The Commission noted that applications for equipment authorization must contain specific information regarding the methods employed to meet our rules. Specifically, certification

applications for systems using advanced antenna technology must provide the algorithm used to reduce the EIRP to the maximum allowed in the event of overlapping beams. In addition, the application must contain information discussing how the equipment meets the requirement to employ a contention based protocol for gaining access to the spectrum and for mobile transmitters, including a description of how the requirement to positively receive and decode an enabling signal is incorporated.

44. The Commission noted, that the rules currently require certification to be approved by the Commission or a designated Telecommunication Certification Body (TCB) before they may be marketed. In General Docket 98-68, we established the requirements for TCBs that are allowed to approve equipment in the same manner as the Commission. In that proceeding, the Commission stated that while it intended to use TCBs to certify a broad range of equipment, we found that certain functions should continue to be performed by the Commission. The functions included certifying new or unique equipment for which the rules or requirements do not exist or for which the application of the rules is not clear. Because it had not previously specified that certification would be based on specification of a contention based protocol, nor on the ability of a mobile station to transmit only after receiving an enabling signal from a base station, the Commission, believes that many questions about the application of the rules may arise. Thus, the Commission decided that TCBs should not be permitted to certify or approve permissive changes for equipment operating under the rules adopted until it gains sufficient experience with this band. Once the Commission gains sufficient experience with equipment in this band, it will determine whether TCBs should be permitted to certify them. Accordingly, until the Chief of the Office of Engineering and Technology acting under the existing delegated authority issues an announcement by public notice, TCBs will not be permitted to certify equipment in the 3650-3700 MHz band.

45. *RF Safety.* The Commission decided that it will require manufacturers to obtain certification for their equipment, among other reasons, to address the need for compliance with the requirements to protect against radio frequency (RF) exposure. In addition, licensees are responsible for ensuring that transmitting equipment, as actually installed, continues to meet RF exposure guidelines. For example, fixed

transmitters operating at the peak EIRP output power of 25 Watts/25 MHz authorized in the R&O would not generally be required to undergo routine RF safety evaluation as a part of the equipment certification process because installation constraints typically result in sufficient separation distances such that human exposure limits would not be exceeded. Nevertheless, the Commission, recognized that such transmitters, particularly those that might be licensed by individuals or other small entities, could have a greater chance of being installed in a diverse range of atypical environments; possibly, for example, even inside a residential home. In such instances, an improper installation could result in circumstances where RF safety standards might be exceeded due to a reduced separation distance. Consequently, the Commission required, as part of the certification process, that equipment manufacturers include sufficiently detailed installation instructions and guidelines to ensure that licensees locate such transmitters in a manner that will maintain appropriate human exposure separations at all times.

46. By comparison, non-fixed transmitters generally require additional evaluation as a part of the manufacturer's equipment certification process. Based upon the peak EIRP operating limit of 1 Watt specified here. The Commission required routine evaluation for these devices to demonstrate RF exposure compliance. In any event, manufacturers are responsible for ensuring that any equipment they design, manufacture, and sell meets the corresponding RF safety limits. Licensees of non-fixed transmitters may generally rely upon the manufacturers' equipment certification that RF exposure guidelines for that equipment have been met.

47. *Federal Government Facilities.* In the NPRM, the Commission sought comment on whether the methods described in the NPRM would provide an effective means of protecting the three Federal Government radiolocation stations that operate in the 3650–3700 MHz band on a primary basis. These stations, located at St. Inigoes, MD, Pascagoula, MS, and Pensacola, FL, were grandfathered as a condition of the transfer of the 3650 MHz band to a mixed-use status. The current rules require that FS and FSS stations located within 80 kilometers of each site coordinate with the Federal Government. As noted, this protection criterion for Federal stations has been in existence for fixed stations since 1999 and the Commission did not propose to

alter it. Thus, the Commission will continue to require coordination with NTIA through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee for any station that requests registration of a site closer than 80 km from the three specified radiolocation sites. The Commission, further noted that our ULS system has the capability of screening for any terrestrial applications that might propose site coordinates located within the 80 kilometer coordination zone and, within approximately 24 hours, flag that application for any necessary coordination.

48. Furthermore, the Commission called to the attention of potential users of the 3650–3700 MHz band that the adjacent 3600–3650 MHz band is used by high power federal government radar systems and they are not limited to the three protected sites. Consequently, terrestrial transmitter/receiver manufacturers will likely find the need to incorporate design measures to protect their equipment from possible overload by these adjacent band radar signals. The Commission strongly recommends that parties installing equipment in this band should determine if there are any nearby Federal Government radar systems that could affect their operations. Information regarding the locations and operational characteristics of the radar systems operating adjacent to this band are provided in NTIA TR–99–361.

49. *Operation in Proximity to U.S. Borders.* To provide sufficient protection to Canadian and Mexican stations operating in the 3650–3700 MHz band that are located near the U.S. borders, the Commission proposed in the NPRM to require that fixed devices be located at least 8 kilometers from the U.S./Canada or U.S./Mexico border if the antenna of the device looks within the 160° sector away from the border and be located at least 56 kilometers from each border if the device looks within the 200° sector towards the border. This proposal is consistent with the treatment of licensed fixed stations in bands above 470 MHz along the U.S./Canada border. The Commission concluded that these same considerations apply to the type of licensed operation that we permit in the R&O. Accordingly, the Commission adopted the requirements for operation near the borders as proposed. The Commission pointed out, however, that even under these guidelines, operators might need to further reduce their power to protect FSS earth stations in Canada or Mexico. It further note that, under our current agreement with

Canada, operations within the distances specified above may be permitted if we are able to coordinate such use with Canada. The Commission noted that it currently has no agreement with Mexico to permit such coordinated use at this time, but in the future, it may negotiate more specific agreements with Mexico and Canada to govern operations near our borders in the 3650–3700 MHz band. Licensees in this band would be required to comply with the provisions of such agreements.

50. *Adjacent Band Emissions.* In the NPRM, the Commission sought updated comment on what interference criteria might be used to protect adjacent band services from licensed systems operating in the 3650 MHz band. For example, the Commission asked if it should require that licensed non-fixed devices comply with the field strength limit described in the *NPRM* for unlicensed devices; or whether we should require that licensed fixed stations comply with a particular field strength limit or satisfy the adjacent band protection criteria proposed in the *3650 MHz Service Rules Second NPRM*. In the *3650 MHz Service Rules Second NPRM*, the Commission proposed that, in order to protect FSS operations in the 3700–4200 MHz band from interference, terrestrial stations operating in the 3650–3700 MHz band would have to comply with the part 101 emission limits already in place to protect such FSS systems from licensed fixed stations operating in the 3700–4200 MHz band. Therein, the Commission, discussed a proposal made earlier in the ET Docket 98–237 proceeding concerning whether the out of band emission limit defined by $43 + 10 \log(P)$ dB minimum attenuation that applies to broadband PCS should be applied to FS operations in the *3650–3700 MHz band*. Comments to that earlier proposal were divided. In that context, the Commission proposed in the *3650 MHz Service Rules NPRM* to require that terrestrial service equipment operating in the 3650–3700 MHz band comply with the emission limits already in place for FS operation in the adjacent 3700–4200 MHz band. Commenters to that proposal were similarly split on what criterion to apply.

51. The Commission adopted rules here to require that new terrestrial operations in the 3650 MHz band limit emissions into the adjacent 3600–3650 MHz and 3700–4400 MHz bands by a minimum attenuation of $43 + 10 \log(P)$ below the transmit power. That is, the power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at

least $43 + 10 \log(P)$. The Commission noted that this requirement is consistent with the out of band emission limit specified in several of the Commission's rule parts (reference) for wireless devices including higher power devices. Furthermore, the limit specified in this section is a generic limit that has been applied successfully for many of our wireless services. Finally, the Commission noted that this limit is very conservative, especially for coded digital signals which generally decay more rapidly and produce lower levels of out of band emission than analog signals. On balance, therefore, the Commission believes that this criterion should provide appropriate protection from out of band emission.

52. *Space station power flux density.* In the *3650 MHz Service Rules NPRM* the Commission sought comment on whether it should adopt a rule for the power flux density (pfd) that a space station operating in the 3650–3700 MHz band may produce consistent with the limit for space stations in the adjacent 3700–4200 MHz band. The limit for the 3700–4200 MHz band, which is contained in § 25.208(a) of the Commission's rules, is identical to the limit in the ITU Radio Regulations, which applies throughout the 3400–4200 MHz band. One commenter supported applying the same pfd limit in the 3650–3700 MHz band as is applied to the upper adjacent band. In order to conform its rules in this regard to the ITU Radio Regulations, the Commission applied the same pfd limit in the 3650–3700 MHz band as it does in the 3700–4200 MHz band.

Memorandum Opinion and Order

53. In the MO&O, the Commission addressed several petitions for reconsideration and an emergency motion for stay that were filed in response to the *3650 MHz Allocation Order* in ET Docket No. 98–237.

54. Consistent with its conclusion in the *Unlicensed Operation NPRM*, the Commission found no statutory obstacle to its decision to affirm its previous allocation decisions, in the *Unlicensed Operation NPRM*, the Commission, concluded that it did not have any remaining statutory obligations under section 3002 of the BBA. Moreover, in consideration of its decision to adopt a licensing approach that does not result in the acceptance of mutually-exclusive applications, the arguments presented by satellite interests to the effect that the Commission inappropriately determined that the 3650 MHz band could satisfy the requirements of section 3002 of the BBA are moot.

Allocation Issues

55. Petitioners generally challenge the rules adopted in the *3650 MHz Allocation Order* that created a new, primary FS/MS allocation and made future, non-grandfathered FSS earth stations secondary. In the *NPRM*, the Commission, asked for comments to refresh the record on the full range of allocation, technical, service and licensing issues raised in this proceeding—including the possibility of revisiting the FSS allocation status in the 3650 MHz band. Thus, the Commission concluded that it had considered anew the potential benefit of different sharing mechanisms in light of this renewed and expanded record. With more specific relation to these petitions for reconsideration, the Commission found that its decision here affirms the FSS allocation changes made in the *3650 MHz Allocation Order*. The Commission stated that, in essence, it had decided that it is desirable to foster new terrestrial services under the FS/MS allocations while protecting a relatively small and static number of grandfathered FSS earth stations in the band. It further noted that it was accomplishing this goal by providing a mechanism (under a streamlined licensing approach) for preventing and addressing any interference concerns of FSS earth stations that might arise from sharing the band with terrestrial operations. The Commission, thus found that its decision strikes a balance among a number of competing factors in a manner that its believe will best serve the public interest and foster the expeditious introduction of new terrestrial services in the 3650 MHz band.

56. Therefore, In light of its full review of the refreshed record in this proceeding, and in light of the decisions made in the companion R&O, the Commission denied the aspects of the petitions that challenge and seek to reverse the allocation decisions made in the *3650 MHz Allocation Order*.

TT&C Issues

57. The Commission denied the petitions for reconsideration insofar as they request that it allow in the 3650 MHz band new TT&C earth stations on a primary basis for out-of-band FSS systems. The Commission concluded, as it stated in the *3650 MHz Service Rules NPRM*, that the basic purpose of the part 25 in-band rules for TT&C is valid. In particular § 25.202(g) of the rules effectively limits FSS operators to operating TT&C links in the same frequency bands as their FSS operations. Thus, a GSO/FSS operator

will generally coordinate its TT&C operations with the same set of satellites, at adjacent orbital locations, with which it coordinates its FSS operations. This simplifies the coordination process for FSS systems and also provides an incentive for an operator to maximize the efficiency of a system's TT&C operations while minimizing the constraints placed on other satellite operations. The Commission noted that its decision is based on a recognition that certain events have occurred since these petitions were filed that mitigate the need to provide the requested relief. In particular, the Commission noted, that it has since authorized satellite systems in the Ka band with TT&C links to be located within band. As a result, TT&C facilities are now available for Ka band systems. As for pending V band system applications, the Commission believes that it is better to address the TT&C needs of particular systems in the context of acting on specific applications for waiver rather than modify the rule based on generalized arguments that some assigned frequency bands of satellite systems are so congested, unreliable, or lacking in manufactured equipment as to render in-band TT&C operations unfeasible.

58. With regard to the filing deadline for co-primary TT&C earth station applications, the secondary status of non-grandfathered TT&C sites, and the restriction on grandfathered TT&C sites to frequencies for which the earth station is already licensed, the Commission believes that those aspects of its decision in the *3650 MHz Allocation Order* are necessary measures that help ensure the terrestrial operations under the primary FS/MS allocations are not unduly hampered. The Commission, thus declines to modify these decisions. Furthermore, the Commission, clarified that the decision in the *3650 MHz Allocation Order* was not intended to exempt from the FSS application "freeze," as EchoStar requests, any future requests for earth stations for TT&C operations that serve satellites already authorized in the 3650 MHz band, including new uplink sites. Nonetheless, the Commission, recognizes that individual cases of particular need, particularly for systems already authorized for the 3650 MHz band, can be better addressed through a waiver process that would evaluate each request on its merit.

Emergency Motion for Stay

59. In October, 2000, the Commission determined that it was necessary to establish a limit on the acceptance of applications and on the construction of

FSS facilities that would be considered primary under the established grandfathering provisions. Accordingly, in the *3650 MHz Allocation Order*, the Commission decided that applications for FSS earth stations in the 3650–3700 MHz band located within 10 miles of the authorized coordinates of an existing grandfathered earth station must be filed prior to December 1, 2000, in order to still be considered co-primary.

60. The Commission, denied the motion for stay. When the Commission established the November 30, 2000, filing deadline, it did so because it found that additional new FSS facilities permitted by the *Freeze MO&O* could affect the use of the 3650–3700 MHz band by the terrestrial services. By deciding in this Order to maintain the FSS allocation changes made in the *3650 MHz Allocation Order*, the Commission, reaffirmed its conclusion that allowing additional primary FSS earth stations in the 3650 MHz band could negatively affect the prospects for viable FS/MS terrestrial operations. In light of the foregoing, the Commission, concluded that granting the stay (with the possible consequence of establishing new FSS filing window, and thereby increasing the number of primary FSS earth stations in the band) would be directly counter to its fundamental judgments concerning future use of the 3650 MHz band and would not serve the public interest.

Ordering Clauses

61. Pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(c), 303(f), and 307 this Report and Order *is hereby adopted*.

62. Parts 1, 2, 15, and 90 of the Commission's rules *are amended* as specified in Rules Changes, and such rule amendments shall be effective 30 days after publication in the **Federal Register**. The Report and Order contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** following approval of the information collection by the Office of Management and Budget (“OMB”) announcing the effective date of those rules.

63. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(r) and 307, the 3650 MHz

Proceeding in ET Docket No. 98–237 *is terminated*.

64. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, that the petitions for reconsideration of the *3650 MHz Allocation Order* *are denied*.

65. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, that the *Emergency Motion for Stay of the 3650 MHz Allocation Order* *is denied*.

66. Pursuant to 47 U.S.C. 155(c) and 47 CFR 0.131(c) and 0.331, the Wireless Telecommunications Bureau *is granted delegated authority* to adopt requirements regarding the reporting of registration and licensing information, pertaining to the 3650 MHz Wireless Broadband Services, in the Universal Licensing System database.

67. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

68. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IFRA) was incorporated in the Notice of Proposed Rule Making (NPRM), “*Unlicensed Operation in the Band 3650–3700 MHz*.”² The Commission sought written public comments on the proposals in the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

69. The Report and Order (“Order”) adopts rules that provide for nationwide, non-exclusive, licensing of terrestrial operations, utilizing contention-based technologies, in the 3650–3700 MHz band (3650 MHz band).

The Order would take the following actions:

- Maintain the existing Fixed Satellite Service (FSS) and Fixed

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

² See Notice of Proposed Rule Making in ET Docket No. 04–151, 19 FCC Rcd 7545 (7580) (2004).

³ See 5 U.S.C. 604.

Service (FS) allocations and modify the Mobile Service (MS) allocation to delete the restriction against mobile-to-mobile operations in the 3650 MHz band. The Order would also maintain the international/intercontinental operation requirements for FSS earth stations.

- Adopt a streamlined licensing mechanism that will serve as a safeguard to protect incumbent satellite earth stations and Federal Government radiolocation stations from harmful interference

- Establish minimal regulatory entry requirements that should encourage multiple entrants and stimulate the rapid expansion of broadband services, especially in rural America

- Establish licensing, service and technical rules that allow fixed, and base-station-enabled mobile terrestrial operations

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

70. None.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

71. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms, “small business,” “small organizations,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷ Nationwide, there are a total of 22.4 million small businesses, according to SBA data.⁸

72. A “small organization” is generally “any not-for-profit enterprise

⁴ See 5 U.S.C. 604(a)(3).

⁵ 5 U.S.C. 601(6).

⁶ 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

⁷ 15 U.S.C. 632.

⁸ See SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

which is independently owned and operated and is not dominant in its field.”⁹ Nationwide, there are approximately 1.6 million small organizations.¹⁰ The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹¹ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.¹² This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

73. The Commission has not developed a definition of small entities applicable to manufacturers of communications devices that are licensed on a nationwide, non-exclusive basis. Therefore, we will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Examples of products in this category include “transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment”¹³ and may include other devices that transmit and receive IP-enabled services, such as personal digital assistants (PDAs). Under the SBA size standard, firms are considered small if they have 750 or fewer employees.¹⁴ According to Census Bureau data for 1997, there were 1,215 establishments¹⁵ in this category that

operated for the entire year.¹⁶ Of those, there were 1,150 that had employment of under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category was approximately 61.35%,¹⁷ so we estimate that the number of wireless equipment manufacturers with employment of under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Consequently, we estimate that the majority of wireless communications equipment manufacturers that may be affected by our action are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

74. The terrestrial service operations authorized by this Order will be governed by new regulations that will be housed in part 90 of our rules. There presently exists a general requirement for all equipment to obtain certification under part 90.¹⁸ Thus, as with other part 90 equipment, we will require manufacturers to obtain similar certification for their equipment.¹⁹ Consequently, the new equipment certification rules adopted for part 90 in this proceeding for transmitters operating the 3650–3700 MHz band would apply similar reporting or recordkeeping requirements. Further, the regulations add permissible operating frequencies for broadband and other technologically advanced uses. The adopted regulations would not require the modification of any existing products. Additionally, rules adopted for use of the 3650 MHz band require that all applicants and licensees shall cooperate in the selection and use of frequencies in the 3650–3700 MHz band in order to minimize the potential for interference and make the most effective use of the authorized facilities.²⁰ A database identifying the locations of registered stations will be available at the FCC’s website to facilitate such cooperation.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

75. The RFA requires an agency to describe any significant alternatives that

it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

76. In the NPRM, the Commission proposed a regulatory scheme for the 3650 MHz band that would have permitted unlicensed use of the band. The NPRM also sought comment on alternative approaches, including those that would provide for licensing of terrestrial operations. Based upon comments to the NPRM and further analysis, this Order adopts an approach that provides for nationwide, non-exclusive licensed operations. Consistent with the underlying goals expressed in the NPRM, we believe that this approach will best provide for the introduction of a new variety of broadband services and technologies in the 3650 MHz band, while protecting grandfathered FSS earth station operations from harmful interference that may be caused by the new services and technologies.

77. We see no evidence that the rules set forth in the *Report and Order* and *Memorandum Opinion and Order* will have a significant economic impact on small entities. The costs involved in the selection and use of frequencies by affected entities, including small entities, should be minimal because of the available on-line database to assist with these efforts. Furthermore, these minimal costs will be shared by all entities that use the 3650 MHz band. In particular, as noted in the *Report and Order*, the streamlined licensing approach should also reduce the costs and regulatory requirements to obtaining a license.²¹

F. Report to Congress

78. The Commission will send a copy of the *Report and Order* and *Memorandum Opinion and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.²² In addition, the Commission will send a copy of the *Report and Order* and

⁹ See 5 U.S.C. 601(4).

¹⁰ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹¹ 5 U.S.C. 601(5).

¹² U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299–300, Tables 490 and 492.

¹³ Office of Management and Budget, *North American Industry Classification System*, pages 308–09 (1997) (NAICS code 334220).

¹⁴ 13 CFR 121.201, NAICS code 334220.

¹⁵ The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

¹⁶ U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, “Industry Statistics by Employment Size,” Table 4, NAICS code 334220 (issued Aug. 1999).

¹⁷ *Id.* Table 5.

¹⁸ See 47 CFR 90.203.

¹⁹ See Order at ¶¶ 69–70, *infra*.

²⁰ See adopted new rule § 90.1319(c) in Appendix A.

²¹ See, e.g., *3650 MHz Report and Order* at paragraphs 27–29.

²² See 5 U.S.C. 801(a)(1)(A).

Memorandum Opinion and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

List of Subjects in Parts 1, 2, 25, and 90
Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rules Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 25, and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

■ 2. Section 1.1307 is amended by revising paragraph (b) (2) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal

Communications Services (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), the Specialized Mobile Radio Service, and the 3650MHz Wireless Broadband Service authorized under Subpart H of parts 22, 24, 25, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 15.253(f), 15.255(g), 15.319(i), and 15.407(f) of this chapter. Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environment evaluation as specified in §§ 2.1093 and 5.1125 of this chapter. Equipment authorized for use in the Medical Implant Communications Service (MICS) as a medical implant transmitter (as defined in Appendix 1 to Subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in § 2.1093 of this chapter by finite difference time domain computational modeling or laboratory measurement

techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate measurement data be submitted. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.106 is amended as follows:

■ a. Revise page 54.

■ b. In the list of United States footnotes, revise footnote US245.

■ c. In the list of non-Federal Government footnotes, remove footnote NG170 and add footnote NG185.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

2900-3100 RADIO NAVIGATION 5.426 Radiolocation	2900-3100 MARITIME RADIO NAVIGATION Radiolocation US44	2900-3100 MARITIME RADIO NAVIGATION Radiolocation US44	Maritime (80) Private Land Mobile (90)
5.425 5.427	5.427 US44 US316	5.427 US316	
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active)	3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active)	3100-3300 Radiolocation Earth exploration-satellite (active) Space research (active)	Private Land Mobile (90)
5.149 5.428	US342	US342	
3300-3400 RADIOLOCATION Amateur Fixed Mobile	3300-3400 RADIOLOCATION Amateur Fixed Mobile	3300-3400 Radiolocation Amateur Fixed Mobile	Private Land Mobile (90) Amateur (97)
5.149 5.429 5.430	5.149 5.430	5.149 5.429	
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation	3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.433	3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.432	
5.431	5.282 5.432	5.282 5.432	
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433	3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433	Private Land Mobile (90)
5.435	5.435	5.435	
See next page for 3700-4200 MHz	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz

* * * * *

United States (US) Footnotes

* * * * *

US245 In the bands 3600–3650 MHz (space-to-Earth), 4500–4800 MHz (space-to-Earth), and 5850–5925 MHz (Earth-to-space), the use of the non-Federal fixed-satellite service is limited to international inter-continental systems and is subject to case-by-case electromagnetic compatibility analysis. The FCC's policy for these bands is codified at 47 CFR 2.108.

* * * * *

Non-Federal (NG) Footnotes

* * * * *

NG185 In the band 3650–3700 MHz, the use of the non-Federal fixed-satellite service (space-to-Earth) is limited to international inter-continental systems.

* * * * *

■ 5. Section 2.1091 is amended by revising paragraph (c) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the Wireless Communications Service, the Maritime Services and the Specialized Mobile Radio Service, and the 3650 MHz Wireless Broadband Service authorized under subpart H of part 22 of this chapter, parts 24, 25 and 27 of this chapter, part 80 of this chapter (ship earth stations devices only) and part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. Unlicensed personal communications service devices, unlicensed millimeter wave devices and unlicensed NII devices authorized under §§ 15.253, 15.255, and 15.257, and subparts D and E of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093(b) requiring evaluation under the provisions of that section. All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment

authorization of mobile and unlicensed transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

* * * * *

■ 6. Section 2.1093 is amended by revising paragraph (c) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, the 3650 MHz Wireless Broadband Service, the 4.9 GHz Band Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Implant Communications Service (MICS), authorized under subpart H of part 22 of this chapter, parts 24, 25, 27, 80 and 90 of this chapter, subparts H and I of part 95 of this chapter, and unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, §§ 15.253, 15.255 and 15.257 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. All other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 7. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 307, 309 and 332, unless otherwise noted.

■ 8. Section 25.202 is amended by adding an entry for 3.65–3.7 GHz and a new footnote 17 to the table in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) * * *

Space-to-Earth (GHz)	Earth-to-space (GHz)
3.65–3.7 ¹⁷ .	
* * * * *	
* * * * *	

¹⁷ FSS earth stations in this band must operate on a secondary basis to terrestrial radiocommunication services, except that the band is shared co-equally between certain grandfathered earth stations and the terrestrial radiocommunication services.

* * * * *

■ 9. Section 25.208 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 25.208 Power flux-density limits.

(a) In the band 3650–4200 MHz, the power flux density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

* * * * *

■ 10. Part 25 is amended by adding § 25.256 to read as follows:

§ 25.256 Special Requirements for operations in the 3.65–3.7 GHz band.

Upon request from a terrestrial licensee authorized under Subpart Z, Part 90 that seeks to place base and fixed stations in operation within 150 km of a primary earth station, licensees of earth stations operating on a primary basis in the fixed satellite service in the 3.65–3.7 GHz band must negotiate in good faith with that terrestrial licensee to arrive at mutually agreeable operating parameters to prevent unacceptable interference.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 11. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 12. Section 90.7 is amended by adding a new definition, in the alphabetically-appropriate location, as follows:

§ 90.7 Definitions.

* * * * *

Contention-based protocol. A protocol that allows multiple users to share the same spectrum by defining the events that must occur when two or more transmitters attempt to simultaneously access the same channel and establishing rules by which a transmitter provides reasonable opportunities for other transmitters to operate. Such a protocol may consist of procedures for initiating new transmissions, procedures for determining the state of the channel (available or unavailable), and procedures for managing retransmissions in the event of a busy channel.

* * * * *

■ 13. Section 90.203 is amended by adding a new paragraph (o), to read as follows:

§ 90.203 Certification required.

* * * * *

(o) *Equipment certification for transmitters in the 3650–3700 MHz band.* (1) Applications for all transmitters must describe the methodology used to meet the requirement that each transmitter employ a contention based protocol (see §§ 90.7, 90.1305 and 90.1321);

(2) Applications for mobile transmitters must identify the base stations with which they are designed to communicate and describe how the requirement to positively receive and decode an enabling signal is incorporated (see § 90.1333); and

(3) Applications for systems using advanced antenna technology must provide the algorithm used to reduce the equivalent isotropically radiated power (EIRP) to the maximum allowed in the event of overlapping beams (see § 90.1321).

(4) Applications for fixed transmitters must include a description of the installation instructions and guidelines for RF safety exposure requirements that will be included with the transmitter. (See § 90.1335).

■ 14. Add subpart Z to Part 90 to read as follows:

Subpart Z—Wireless Broadband Services in the 3650–3700 MHz Band

Sec.

90.1301 Scope.
90.1303 Eligibility.
90.1305 Permissible operations.
90.1307 Licensing.
90.1309 Regulatory status.
90.1311 License term.
90.1312 Assignment and transfer.
90.1319 Policies governing the use of the 3650–3700 MHz band.

90.1321 Power and antenna limits.

90.1323 Emission limits.

90.1331 Restrictions on the operation of base and fixed stations.

90.1333 Restrictions on the operation of mobile and portable stations.

90.1335 RF safety.

90.1337 Operation near Canadian and Mexican borders.

§ 90.1301 Scope.

This subpart sets out the regulations governing wireless operations in the 3650–3700 MHz band. It includes licensing requirements, and specific operational and technical standards for wireless operations in this band. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in the Commission's rules; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this band.

§ 90.1303 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

§ 90.1305 Permissible operations.

Use of the 3650–3700 MHz band must be consistent with the allocations for this band as set forth in Part 2 of the Commission's Rules. All stations operating in this band must employ a contention-based protocol (as defined in § 90.7).

§ 90.1307 Licensing.

The 3650–3700 MHz band is licensed on the basis of non-exclusive nationwide licenses. Non-exclusive nationwide licenses will serve as a prerequisite for registering individual fixed and base stations. A licensee cannot operate a fixed or base station before registering it under its license and licensees must delete registrations for unused fixed and base stations.

§ 90.1309 Regulatory status.

Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service.

§ 90.1311 License term.

The license term is ten years, beginning on the date of the initial authorization (non-exclusive nationwide license) grant. Registering fixed and base stations will not change the overall renewal period of the license.

§ 90.1312 Assignment and transfer.

Licensees may assign or transfer their non-exclusive nationwide licenses, and any fixed or base stations registered under those licenses will remain associated with those licenses.

§ 90.1319 Policies governing the use of the 3650–3700 MHz band.

(a) Channels in this band are available on a shared basis only and will not be assigned for the exclusive use of any licensee

(b) Any base, fixed, or mobile station operating in the band must employ a contention-based protocol.

(c) All applicants and licensees shall cooperate in the selection and use of frequencies in the 3650–3700 MHz band in order to minimize the potential for interference and make the most effective use of the authorized facilities. A database identifying the locations of registered stations will be available at <http://wireless.fcc.gov/uls>. Licensees should examine this database before seeking station authorization, and make every effort to ensure that their fixed and base stations operate at a location, and with technical parameters, that will minimize the potential to cause and receive interference. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements.

§ 90.1321 Power and antenna limits.

(a) Base and fixed stations are limited to 25 watts/25 MHz equivalent isotropically radiated power (EIRP). In any event, the peak EIRP power density shall not exceed 1 Watt in any one-megahertz slice of spectrum.

(b) In addition to the provisions in paragraph (a) of this section, transmitters operating in the 3650–3700 MHz band that emit multiple directional beams, simultaneously or sequentially, for the purpose of directing signals to individual receivers or to groups of receivers provided the emissions comply with the following:

(1) Different information must be transmitted to each receiver.

(2) If the transmitter employs an antenna system that emits multiple directional beams but does not emit multiple directional beams simultaneously, the total output power conducted to the array or arrays that comprise the device, *i.e.*, the sum of the power supplied to all antennas, antenna elements, staves, etc. and summed across all carriers or frequency channels, shall not exceed the limit specified in paragraph (a) of this section, as applicable. The directional

antenna gain shall be computed as follows:

(i) The directional gain, in dBi, shall be calculated as the sum of 10 log (number of array elements or staves) plus the directional gain, in dBi, of the individual element or stave having the highest gain.

(ii) A lower value for the directional gain than that calculated in paragraph (b)(2)(i) of this section will be accepted if sufficient evidence is presented, *e.g.*, due to shading of the array or coherence loss in the beam-forming.

(3) If a transmitter employs an antenna that operates simultaneously on multiple directional beams using the same or different frequency channels and if transmitted beams overlap, the power shall be reduced to ensure that the aggregate power from the overlapping beams does not exceed the limit specified in paragraph (b)(2) of this section. In addition, the aggregate power transmitted simultaneously on all beams shall not exceed the limit specified in paragraph (b)(2) of this section by more than 8 dB.

(4) Transmitters that emit a single directional beam shall operate under the provisions of paragraph (b)(2) of this section.

(c) Mobile and portable stations are limited to 1 watt/25 MHz EIRP. In any event, the peak EIRP density shall not exceed 40 milliwatts in any one-megahertz slice of spectrum.

§ 90.1323 Emission limits.

(a) The power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least $43 + 10 \log (P)$ dB. Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or less, but at least one percent of the emission bandwidth of the fundamental emission of the transmitter, provided the measured energy is integrated over a 1 MHz bandwidth.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 90.1331 Restrictions on the operation of base and fixed stations.

(a)(1) Except as provided in paragraph (a)(2) of this section, base and fixed stations may not be located within 150 km of any grandfathered satellite earth station operating in the 3650–3700 MHz band. The coordinates of these stations

are available at <http://www.fcc.gov/ib/sd/3650/>.

(2) Base and fixed stations may be located within 150 km of a grandfathered satellite earth station provided that the licensee of the satellite earth station and the 3650–3700 MHz licensee mutually agree on such operation.

(3) Any negotiations to enable base or fixed station operations closer than 150 km to grandfathered satellite earth stations must be conducted in good faith by all parties.

(b) (1) Except as specified in paragraph (b)(2) of this section, base and fixed stations may not be located within 80 km of the following Federal Government radiolocation facilities: St. Inigoes, MD—38° 10' N., 76°, 23' W. Pascagoula, MS—30° 22' N., 88°, 29' W. Pensacola, FL—30° 21' 28" N., 87°, 16' 26" W.

Note: Licensees installing equipment in the 3650–3700 MHz band should determine if there are any nearby Federal Government radar systems that could affect their operations. Information regarding the location and operational characteristics of the radar systems operating adjacent to this band are provided in NTIA TR-99-361.

(2) Requests for base or fixed station locations closer than 80 km to the Federal Government radiolocation facilities listed in paragraph (b)(1) of this section will only be approved upon successful coordination by the Commission with NTIA through the Frequency Assignment Subcommittee of the Interdepartmental Radio Advisory Committee.

§ 90.1333 Restrictions on the operation of mobile and portable stations.

(a) Mobile and portable stations may operate only if they can positively receive and decode an enabling signal transmitted by a base station.

(b) Any mobile/portable stations may communicate with any other mobile/portable stations so long as each mobile/portable can positively receive and decode an enabling signal transmitted by a base station.

(c) Airborne operations by mobile/portable stations is prohibited.

§ 90.1335 RF safety.

Licensees in the 3650–3700 MHz band are subject to the exposure requirements found in § 1.1307(b), 2.1091 and 2.1093 of our Rules.

§ 90.1337 Operation near Canadian and Mexican borders.

(a) Fixed devices generally must be located at least 8 kilometers from the U.S./Canada or U.S./Mexico border if the antenna of that device looks within

the 160° sector away from the border. Fixed devices must be located at least 56 kilometers from each border if the antenna looks within the 200° sector towards the border.

(b) Fixed devices may be located nearer to the U.S./Canada or U.S./Mexico border than specified in paragraph (a) of this section only if the Commission is able to coordinate such use with Canada or Mexico, as appropriate.

(c) Licensees must comply with the requirements of current and future agreements with Canada and Mexico regarding operation in U.S./Canada and U.S./Mexico border areas.

[FR Doc. 05-9096 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[FCC 05-22]

Order on Reconsideration, in the Matter of Children's Television Obligations of Digital Television Broadcasters

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay of effective date.

SUMMARY: This document stays two sections of the CFR regarding the requirements for Internet Web site address displays in children's television programming in MM Docket 00-167, published on January 3, 2005 (70 FR 25), until January 1, 2006. These requirements became effective on February 3, 2005.

DATES: Effective May 11, 2005, 47 CFR 73.670(b) and (c) and 76.225(b) and (c) are stayed until January 1, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418-2120.

SUPPLEMENTARY INFORMATION: Among other things, the *Report and Order* adopted September 9, 2004 in MM Docket 00-167 (70 FR 25, January 3, 2005) held that the display of Internet Web site addresses during programs directed to children ages 12 and under is permitted as within the commercial time limitations only if the Web site meets the following criteria: (1) It offers a substantial amount of bona fide program-related or other noncommercial content; (2) it is not primarily intended

for commercial purposes, including either e-commerce or advertising; (3) the Web site's Home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material). The *Report and Order* also states that the display of Web site addresses in children's programs is prohibited during both program material and commercial material when the site uses characters from the program to sell products or services. This Order on Reconsideration grants the informal request of a number of broadcasters and cable operators and programmers that the effective date of these new rules be deferred to January 1, 2006, consistent with the effective date of many of the other requirements in the Order.

A number of broadcasters and cable operators and programmers have expressed concern that compliance with these new requirements by the February 1, 2005, effective date will be difficult. Specifically, these parties state that they were unprepared for the decision to regulate Web site displays virtually immediately, and that each company must structure a plan of compliance and then reconstruct its Web site or Web sites accordingly. These parties have requested that the effective date of these new rules be stayed to January 1, 2006, consistent with the effective date of many of the other requirements in the *Report and Order*.

We believe that it is appropriate to afford broadcasters and cable operators additional time to come into compliance with these newly adopted requirements. Accordingly, on our own motion, pursuant to 47 CFR 1.108, we stay the effective date of newly adopted §§ 73.670(b) and (c) and Sections 76.225(b) and (c) of Title 47 of the Commission's rules until January 1, 2006. This stay in the effective date of these new provisions will give broadcasters and cable operators more time to review and make any necessary changes to their programs or Web sites to comply with these new requirements.

The *Report and Order* also makes effective February 1, 2005 the decision to apply the commercial limits and policies to all digital video programming directed to children ages 12 and under, whether that programming is aired on a free or pay digital stream. Thus, the limitation on the number of minutes of commercial matter in children's programming to

10.5 minutes per hour on weekends and 12 minutes per hour on weekdays applies to both analog and digital broadcasters and to both free and pay digital streams. We do not delay the effective date of this requirement. However, the *Report and Order* was published in the **Federal Register** January 3, 2005. Accordingly, we will commence enforcement of this requirement February 3, 2005, rather than February 1, 2005.

Congressional Review Act. The Commission will send a copy of this Order on Reconsideration in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Paperwork Reduction. This Order on Reconsideration does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(ca)(4).

Accordingly, it is ordered that 47 CFR Sections 73.670(b) and (c) and Sections 76.225(b) and (c) as adopted in the *Report and Order* in the above-captioned proceeding are stayed until January 1, 2006.

List of Subjects in 47 CFR Parts 73 and 76

Cable, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-9104 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134-4135-01; I.D. 050405D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #1—Adjustment of the Commercial Fisheries From the Cape Falcon, Oregon, to the Oregon-California Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces that the commercial salmon fisheries in the area from the Cape Falcon, Oregon, to the Oregon-California Border were modified by inseason action. This action was necessary to conform to the 2004 management goals. The intended effect of this action was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

DATES: Adjustments for the area from the Cape Falcon, OR, to the Oregon-California Border effective 0001 hours local time (l.t.), March 15, 2005, until 2359 hours l.t., April 15, 2005; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through May 26, 2005.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4132; or faxed to 562-980-4018. Comments can also be submitted via e-mail at the 2005salmonIA1.nwr@noaa.gov address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include Docket Number 040429134-4135-01 in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206-526-6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) modified the seasons for the commercial salmon fishery in the area from Cape Falcon, OR to the Oregon-California Border by inseason action. The area from Cape Falcon to Humbug Mountain, OR was modified to be open March 15 through March 25, 2005, and April 1 through April 15, 2005, with a Chinook minimum size limit of 27 inches (68.6

cm) total length and a landing restriction that all fish caught within the area must be landed in Oregon. The area from Humbug Mountain to the Oregon/California Border was modified to be open March 15 through March 25, 2005, and April 1 through April 15, 2005, with a Chinook minimum size of 27 inches (68.6 cm) total length and a landing restriction that vessels must land their fish in Gold Beach, Port Orford, or Brookings, OR. On March 10, 2005, the RA determined that available catch and effort data indicated that the impacts to certain weak stocks was more than predicted preseason in 2004 and that restricting the fishery was warranted to reduce impacts to weak stocks, and to offset the need for even greater restrictions in the fisheries proposed to open after May 1, 2005.

All other restrictions remain in effect as announced for 2004 ocean salmon fisheries. This action was necessary to conform to the 2004 management goals. Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i) and (ii).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon in the area from Cape Falcon, OR, to the Oregon-California Border would open for the following areas:

Cape Falcon to Florence South Jetty, OR

In 2005, the season will open March 15 for all salmon except coho, with a 27-inch (68.6-cm) total length Chinook minimum size limit. This opening could be modified following Pacific Fishery Management Council (Council) review at its November 2004 meeting.

Florence South Jetty to Humbug Mountain, OR

In 2005, the season will open March 15 for all salmon except coho, with a 27-inch (68.6 cm) total length Chinook minimum size limit. This opening could be modified following Council review at its November 2004 meeting.

Humbug Mountain, OR to Oregon-California Border

In 2005 the season will open March 15 for all salmon except coho, with a 27-inch (68.6 cm) total length minimum size limit. This opening could be modified following Council review at its November 2004 meeting.

During the November 2004 meeting the Council decided to defer making a decision to modify the commercial salmon fisheries off Oregon, that were scheduled to open prior to May 1, 2005, to the March 2005 meeting. The decision was deferred because of the expectation that there would be better information regarding the status of

Klamath River fall (KRF) Chinook, the primary stock of concern, at the March meeting.

On March 9, 2005, during the Council meeting, the State of Oregon proposed, and the Council adopted multiple modifications to the commercial salmon fishery in the area from Cape Falcon, OR, to the Oregon-California Border. The area from Cape Falcon to Humbug Mountain, OR was modified to be open March 15 through April 15, 2005, with a Chinook minimum size is 27 inches (68.6 cm) total length, and a landing restriction that all fish caught within this area must be landed in Oregon. The area from Humbug Mountain to the Oregon/California Border was modified to open March 15 through April 30, 2005, with a Chinook minimum size of 27 inches (68.6 cm) total length, and a landing restriction that vessels must land their fish in Gold Beach, Port Orford, or Brookings, OR. The purpose of the modification was to reduce fishing time in the early season when impacts to KRF Chinook would be particularly high. Without the modifications the summer fishing seasons beginning May 1 would have had to be reduced even farther to meet management objectives for KRF Chinook.

On March 10, 2005, the Council's Salmon Technical Committee provided additional analysis regarding the proposed options being developed for the 2005 fishing seasons. The analysis indicated that the impacts on KRF Chinook during the summer would be higher than had been reported the previous day when the Council made their decision regarding the above inseason action. In response, the State of Oregon and the Oregon representatives of the Council's Salmon Advisory Subpanel proposed to further restrict the spring salmon fisheries in order to meet conservation objectives for KRF Chinook and reduce the need for even greater restrictions during the summer. Therefore, the State of Oregon proposed, and the Council adopted, the following seasons: in the area from Cape Falcon to Humbug Mountain, OR to be open March 15 through March 25, 2005, and April 1 through April 15, 2005, with a Chinook minimum size limit of 27 inches (68.6 cm) total length and a landing restriction that all fish caught within the area must be landed in Oregon; and in the area from Humbug Mountain to the Oregon/California Border to be open March 15 through March 25, 2005, and April 1 through April 15, 2005, with a Chinook minimum size of 27 inches (68.6 cm) total length and a landing restriction

that vessels must land their fish in Gold Beach, Port Orford, or Brookings, OR.

The RA consulted with the Council, including the Oregon Department of Fish and Wildlife, during the November and March 2005 Council meetings. Information related to the status of KRF Chinook, catch to date, the Chinook catch rate, and effort data indicated that restricting the spring fisheries was warranted to reduce impacts to weak stocks, and to offset the need for even greater restrictions in the fisheries proposed to open after May 1, 2005. As a result, NMFS approved the inseason modifications adopted by the Council at its March 2005 meeting.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the Council. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the previously described action was given, prior to the date the action was effective, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA

also finds good cause to waive the 30-day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would unnecessarily limit fishers appropriately

controlled access to available fish during the scheduled fishing season.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 05-9421 Filed 5-10-05; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 70, No. 90

Wednesday, May 11, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20440; Directorate Identifier 2005-CE-05-AD]

RIN 2120-AA64

Airworthiness Directives; Aero Advantage ADV200 Series (Part Numbers ADVPL211CC and ADVPL212CW) Vacuum Pumps

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all airplanes equipped with Aero Advantage ADV200 series (part numbers ADVPL211CC and ADVPL212CW) vacuum pumps installed under supplemental type certificate number SA10126SC, through field approval, or other methods. This proposed AD would require you to remove any affected vacuum pump and related monitor system, remove the applicable airplane flight manual supplement (AFMS) and placard, and install an FAA-approved vacuum pump other than the affected part numbers. This proposed AD results from several reports of pump chamber failure. We are issuing this proposed AD to correct problems with the vacuum pump before failure or malfunction during instrument flight rules (IFR) flight that can lead to loss of flight instruments critical for flight. The loss of flight instruments could cause pilot disorientation and loss of control of the aircraft.

DATES: We must receive any comments on this proposed AD by July 11, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- **Fax:** 1-202-493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To view the comments to this proposed AD, go to <http://dms.dot.gov>. The docket number is FAA-2005-20440; Directorate Identifier 2005-CE-05-AD.

FOR FURTHER INFORMATION CONTACT:

Peter Hakala, Aerospace Engineer, Special Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0190; telephone: (817) 222-5145; facsimile: (817) 222-5785.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, "FAA-2005-20440; Directorate Identifier 2005-CE-05-AD" at the beginning of your comments. We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA-2005-20440; Directorate Identifier 2005-CE-05-AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Are there any specific portions of this proposed AD I should pay attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at <http://dms.dot.gov>. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? For the Aero Advantage ADV200 series (part numbers (P/Ns) ADVPL211CC and ADVPL212CW) vacuum pumps, FAA has received reports of 14 single shaft failures and 11 dual shaft failures in a population of 285 pumps. Nine of the failures occurred with less than 100 hours time-in-service. The failures are concentrated on airplanes with the Lycoming Engines IO-540 series engines.

In May 2004, Aero Advantage reported to FAA that they had stopped production and sales of the pumps and that they were quitting the business.

The Aero Advantage ADV200 series vacuum pumps are installed under supplemental type certificate number SA10126SC, through field approval, or other methods. The installation of the vacuum pump includes a monitor system, airplane flight manual supplement (AFMS), and a placard.

What is the potential impact if FAA took no action? Failure or malfunction of the vacuum pump during instrument flight rules (IFR) flight can lead to loss of flight instruments critical for flight.

The loss of flight instruments could cause pilot disorientation and loss of control of the aircraft.

FAA’s Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to remove any Aero Advantage ADV200 series (P/Ns ADVPL211CC and ADVPL212CW) vacuum pump, the related monitor

system, the applicable AFMS and related placard installed under supplemental type certificate number SA10126SC, through field approval, or other methods. It would also require you to install an FAA-approved vacuum pump other than the affected part numbers.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA’s AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD.

Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD could affect 285 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed removal and replacement. We have no way of determining the exact number of airplanes that will need this removal and replacement:

Labor cost	Average parts cost	Total cost per airplane
3 work hours × \$65 = \$195	\$400	\$595

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a “significant regulatory action” under Executive Order 12866;

2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under ADDRESSES. Include “AD Docket FAA–2005–20440; Directorate Identifier 2005–CE–05–AD” in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Aero Advantage: Docket No. FAA–2005–20440; Directorate Identifier 2005–CE–05–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by July 11, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects ADV200 series (part numbers (P/Ns) ADVPL211CC and ADVPL212CW) vacuum pumps installed on, but not limited to, the following aircraft that are certificated in any category. These vacuum pumps can be installed under supplemental type certificate number SA10126SC, through field approval, or other methods:

Make	Model
Alexandria Aircraft, LLC.	14–19, 14–19–2, 14–19–3, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, and 17–31ATC.
Alliance Aircraft Group, LLC.	H–295 (USAF U10D).
American Champion Aircraft Corp.	7AC, 7ECA, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBC, 7HC, 7KC, 7KAB, 8GCBC, and 8KCAB.

Make	Model	Make	Model	Make	Model
Cessna Aircraft Company, The.	172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, R182, T182, TR182, 172RG, R172E, R172F, R172H, R172J, 152, A152, 210, 210-5 (205), 210-5A (205A), 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, P210N, T210G, T210H, T210M, T210N, T210R, 185, 185A, 185B, 185C, 185D, 185E, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 120, 140, 170, 170A, 170B, 177, 177A, 177B, 207, 207A, T207, T207A, 177RG, 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, 188, 188A, 188B, A188, A188A, and A188B.	Mooney Aircraft Corporation.	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20M, and M22.	Raytheon Aircraft Company.	35-33, 35-A33, 35-B33, 35-C33, 35-C33A, 36, A36, A36TC, B36TC, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, V35, V35A, V35B, D45 (Military T-34B), 35, 35R, A35, B35, C35, D35, E35, F35, G35, 19A, 23, A23, A23A, A24, A24R, B19, B23, B24R, C23, and C24R.
		Navion Aircraft Company, Ltd.	Navion G and Navion H.	Rogers, Burl A.	15AC and S15AC.
		Piper Aircraft, Inc., The New.	PA-23, PA-23-160, PA-23-235, PA-23-250 (Navy UO-1), PA-E23-250, PA-24, PA-24-250, PA-24-260, PA-18, PA-18-105 (Special), PA-18-135, PA-18-150, PA-20-115, PA-20-135, PA-22-108, PA-22-135, PA-22-150, PA-22-160, PA-25, PA-25-235, PA-25-260, PA-28-140, PA-28-150, PA-28-151, PA-28-160, PA-28-161, PA-28-180, PA-28-181, PA-28-201T, PA-28-235, PA-28-236, PA-28R-180, PA-28R-200, PA-28R-201, PA-28R-201T, PA-28RT-201, PA-28RT-201T, PA-25, PA-25-235, PA-25-260, J5A-80, J5A (Army L-4F), J5B (Army L-4G), J5C, PA-12, PA-36-285, PA-36-300, PA-36-375, PA-38-112, PA-30, PA-39, PA-40, PA-31, PA-31-300, PA-31-325, PA-31-350, PA-32-260, PA-32-300, PA-32-301, PA-32-301T, PA-32R-300, PA-32R-301 (HP), PA-32R-301T, PA-32RT-300T, PA-31P, and PA-36-300.	SOCATA—Groupe Aerospatiale.	MS 885, MS 892A-150, MS 892E-150, MS 893A, MS 893E, Rallye 150 ST, Rallye 150 T, TB 10, TB 20, and TB 9.
				Tiger Aircraft LLC	AA-1, AA-1A, AA-1B, AA-1C, AA-5, AA-5A, and AA-5B.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of several reports of pump chamber failure. The actions specified in this AD are intended to correct problems with the vacuum pump before failure or malfunction during instrument flight rules (IFR) flight that can lead to loss of flight instruments critical for flight. The loss of flight instruments could cause pilot disorientation and loss of control of the aircraft.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Remove any Aero Advantage ADV200 series (P/Ns ADVPL211CC and ADVPL212CW) vacuum pump, and the related monitor system and placard.	Within 100 hours time-in-service (TIS) or the next 12 calendar months after the effective date of this AD, whichever occurs first, unless already done.	Not Applicable.

Actions	Compliance	Procedures
(2) Remove the airplane flight manual supplement for any Aero Advantage ADV200 series (P/Ns ADVPL211CC and ADVPL212CW) vacuum pump and monitor system from the FAA-approved airplane flight manual (AFM).	As of the removal of any vacuum pump per paragraph (e)(1) of this AD.	Not Applicable.
(i) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual changes requirement of this AD.		
(ii) Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).		
(3) Install an FAA-approved vacuum pump other than the affected part numbers.	Before further flight after removing any Aero Advantage ADV200 series (P/Ns ADVPL211CC or ADVPL212CW) vacuum pump per paragraph (e)(1) of this AD.	Not Applicable.
(4) Do not install any Aero Advantage ADV200 series (P/Ns ADVPL211CC and ADVPL212CW) vacuum pump.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Special Certification Office, Rotorcraft Directorate, FAA. For information on any already approved alternative methods of compliance, contact Peter Hakala, Aerospace Engineer, Special Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0190; telephone: (817) 222-5145; facsimile: (817) 222-5785.

May I Get Copies of the Documents Referenced in This AD?

(g) To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2005-20440; Directorate Identifier 2005-CE-05-AD.

Issued in Kansas City, Missouri, on May 4, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-9366 Filed 5-10-05; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05-OAR-2004-OH-0004; FRL-7910-5]

Approval and Promulgation of Implementation Plans; Ohio New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve revisions to the prevention of significant deterioration (PSD) and nonattainment new source review (NSR) construction permit programs submitted by the Ohio Environmental Protection Agency (OEPA). EPA fully approved Ohio's nonattainment NSR program on January 10, 2003. EPA fully approved Ohio's PSD program on January 22, 2003, which became effective on March 10, 2003.

On December 31, 2002, EPA published revisions to the Federal PSD and NSR regulations. These revisions are commonly referred to as "NSR Reform" regulations and became effective on March 3, 2003. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). The OEPA is seeking approval of rules to implement these NSR Reform provisions in Ohio.

DATES: Comments must be received on or before June 10, 2005. EPA will address the public comments in a subsequent final rule based on this proposed rule.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2004-OH-0004, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-

line instructions for submitting comments.

E-mail: blakley.pamela@epa.gov.

Fax: (312) 886-5824.

Mail: You may send written comments to:

Pamela Blakley, Chief, Air Permits Section, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: Pamela Blakley, Chief, Air Permits Section, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05-OAR-2004-OH-0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Genevieve Damico, Environmental Engineer, at (312) 353-4761 before visiting the Region 5 office. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Air Permits Section (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 353-4761, E-Mail Address: damico.genevieve@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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I. General Information

A. Does this action apply to me?

This action applies to air pollution sources which are subject to Ohio's permit to install regulations in OAC 3745-31.

B. How can I get copies of this document and other related information?

1. The EPA Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. R05-OAR-2004-OH-0004, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. **Electronic Access.** You may access this **Federal Register** document electronically through the [regulations.gov](http://www.regulations.gov) Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and that are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and to whom do I submit comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket R05-OAR-2004-OH-0004" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

II. Program Review

A. What is being addressed in this document?

As stated in the December 31, 2002, EPA "NSR Reform" rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). With this submittal, Ohio requests approval of program revisions to satisfy this requirement.

The OEPA submitted these regulatory revisions to EPA for parallel processing on September 14, 2004, which was prior to final adoption of the State rules. Ohio adopted the final rules on October 28, 2004.

B. What are the program changes that EPA is approving?

Ohio Administrative Code (OAC) 3745-31-01 Definitions

3745-31-01(A)

Ohio has incorporated the definitions codified in OAC 3745-21-01 to apply in OAC 3745-31 of the new rules. EPA proposes to approve these changes.

Actual Emissions

Ohio has revised the definition of "actual emissions" in OAC 3745-31-01(C) to add the term "regulated NSR pollutant" (see definition below), to revise the language to specify the time frame as a "consecutive twenty-four (24) month period," and to add language stating that this definition does not apply for calculating a significant emissions increase or for establishing a Plantwide Applicability Limit (PAL). Ohio also revised the rule language to require that electric utility steam generating unit actual emissions are to be based on potential to emit rather than representative actual annual emissions. The revised definition of "actual

emissions” is consistent with the definition in 40 CFR 51.166(b)(21) and 40 CFR 51.165(a)(1)(xii), therefore we propose to approve this definition.

Actuals PAL

Ohio has established the definition of “actuals PAL” in OAC 3745–31–01(D). This definition is consistent with the definition of “clean unit” in 40 CFR 51.166(w)(2)(i) and 40 CFR 51.165(f)(2)(i), therefore we propose to approve this definition.

Baseline Actual Emissions

Ohio has added a definition in OAC 3745–31–01 (O) to establish the baseline actual emissions for any existing electric utility steam generating unit to be the average rate at which the unit actually emitted the pollutant during any consecutive 24-month period within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. This definition also establishes the baseline actual emissions for any existing emission unit other than an electric utility steam generating unit to be the average rate at which the unit actually emitted the pollutant during any consecutive 24-month period within the 10-year period immediately preceding either the date when the owner or operator begins actual construction of the project or the date a complete permit application is received by the permitting authority for a permit required by this rule. This definition establishes a zero baseline for actual emissions for a new emissions unit for purposes of determining the emissions increase that will result from the initial construction and operation of the unit. Thereafter, for all other purposes, the baseline actual emissions shall equal the unit’s potential to emit. Finally, this definition also establishes the baseline actual emissions for a PAL. This definition is consistent with the definition in 40 CFR 51.166(b)(47) and 40 CFR 51.165(a)(1)(xxxv), therefore we propose to approve this definition.

Baseline Concentration

Ohio has modified the definition of “baseline concentration” in OAC 3745–31–01(Q). The definition now follows the language of 40 CFR 51.166(b)(13), therefore we propose to approve this definition.

Best Available Control Technology

Ohio has modified the definition of “best available control technology” in OAC 3745–31–01(S). The language “maximum degree of reduction for each air pollutant subject to regulation under the provisions of the CAA” has been

replaced with “maximum degree of reduction for each regulated NSR pollutant”. This definition is consistent with the definition in 40 CFR 51.166(b)(12) and 40 CFR 51.165(a)(1)(xl), therefore we propose to approve this definition.

Clean Unit

Ohio has established the definition of “clean unit” in OAC 3745–31–01(Y). This definition is consistent with the definition of “clean unit” in 40 CFR 51.166(b)(41) and 40 CFR 51.165(a)(1)(xxix), therefore we propose to approve this definition.

Continuous Emissions Monitoring System

Ohio has established the definition of “continuous emissions monitoring system” in OAC 3745–31–01(EE). This is consistent with the definition of “continuous emissions monitoring system” in 40 CFR 51.166(b)(43) and 40 CFR 51.165(a)(1)(xxxi), therefore we propose to approve this definition.

Continuous Emissions Rate Monitoring System (CERMS)

Ohio has established the definition of “continuous emissions rate monitoring system” in OAC 3745–31–01(FF). This is consistent with the definition of “continuous emissions rate monitoring system” in 40 CFR 51.166(b)(46) and 40 CFR 51.165(a)(1)(xxxiv), therefore we propose to approve this definition.

Continuous Parameter Monitoring System (CPMS)

Ohio has established the definition of “continuous parameter monitoring system” in OAC 3745–31–01(GG). This is consistent with the definition of “continuous parameter monitoring system” in 40 CFR 51.166(b)(45) and 40 CFR 51.165(a)(1)(xxxiii), therefore we propose to approve this definition.

Emissions Unit

Ohio has modified the definition of “emissions unit” in OAC 3745–31–01(MM). This definition is consistent with the definition of “emissions unit” in 40 CFR 51.166(b)(7) and 40 CFR 51.165(a)(1)(vii), therefore we propose to approve this definition.

Lowest Achievable Emission Rate (LAER)

Ohio has modified the definition of “lowest achievable emission rate” in OAC 3745–31–01(FFF) by replacing “stationary source” with “emissions unit” in the definition from 40 CFR 51.165(a)(1)(xiii). OEPA believes that the term emissions unit is more appropriate than the term stationary

source because LAER universally applies at the emissions unit level. OEPA believes that LAER must be determined at the emissions unit level so that similar technologies can be reviewed. OEPA also believes that establishing LAER at the stationary source level may cause overlooking of the fact that a subpart of the stationary source (an emissions unit) may be able to emit at a lower level, even though the stationary source may appear to meet LAER.

This change is consistent with the federal program concerning clean units and PALs where LAER requirements apply. In those instances, LAER is applied at the emissions unit level. Ohio’s change eliminates a dual definition of “stationary source” and makes clear that LAER is to be determined at the emissions unit. EPA proposes to approve this definition of LAER.

Major Modification

Ohio has modified the definition of “major modification” in OAC 3745–31–01(III) to add provisions regarding PCPs and PALs. This modification is consistent with 40 CFR 51.166(a)(7) and (b)(2) and 40 CFR 51.165(a)(1)(v), therefore we propose to approve this definition.

Major Source Baseline Date

Ohio has established the definition of “Major Source Baseline Date” in OAC 3745–31–01(JJJ). This is consistent with the definition in 40 CFR 51.166(b)(14), therefore we propose to approve this definition.

Major Stationary Source

Ohio has modified the definition of “major stationary source” in OAC 3745–31–01(KKK) to replace the phrase “air pollutant subject to regulation under the Clean Air Act including lead compounds but excluding other air pollutants regulated due to being listed under section 112 of the Clean Air Act” with “regulated NSR pollutant.” These modifications are consistent with the definition in 40 CFR 51.166(b)(1) and 40 CFR 51.165(a)(1)(iv), therefore we propose to approve this definition.

Minor Source Baseline

Ohio has established the definition of “Major Source Baseline Date” in OAC 3745–31–01(NNN). This is consistent with the definition in 40 CFR 51.166(b)(14), therefore we propose to approve this definition.

Net Emissions Increase

Ohio has modified the definition of “net emissions increase” in OAC 3745–

31–01(RRR) to add provisions regarding clean units and PCPs and other minor wording changes. These modifications are consistent with the definition in 40 CFR 51.166(b)(3) and 40 CFR 51.165(a)(1)(vi), therefore we propose to approve this definition.

New Source Review Project

Ohio has established the definition of “new source review project” in OAC 3745–31–01(UUU). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxxix) and 40 CFR 51.166(a)(51), therefore we propose to approve this definition.

Nonattainment or Nonattainment Area

Ohio has established the definition of “nonattainment or nonattainment area” in OAC 3745–31–01(VVV). This is consistent with the requirements in 40 CFR 51.165(a)(2)(i), therefore we propose to approve this definition.

Nonattainment New Source Review Permit

Ohio has established the definition of “nonattainment new source review permit” in OAC 3745–31–01(WWW). This is consistent with the definition in 40 CFR 51.165(a)(1)(xxx), therefore we propose to approve this definition.

PAL Allowable Emissions

Ohio has established the definition of “PAL allowable emissions” in OAC 3745–31–01(CCCC). This is consistent with the definition in 40 CFR 51.166(w)(2)(ii) and 40 CFR 51.165(f)(2)(ii), therefore we propose to approve this definition.

PAL Effective Date

Ohio has established the definition of “PAL effective date” in OAC 3745–31–01(DDDD). This is consistent with the definition in 40 CFR 51.166(w)(2)(vi) and 40 CFR 51.165(f)(2)(vi), therefore we propose to approve this definition.

PAL Effective Period

Ohio has established the definition of “PAL effective date” in OAC 3745–31–01(EEEE). This is consistent with the definition in 40 CFR 51.166(w)(2)(vii) and 40 CFR 51.165(f)(2)(vii), therefore we propose to approve this definition.

PAL Major Emissions Unit

Ohio has established the definition of “plantwide applicability limit” in OAC 3745–31–01(FFFF). This is consistent with the definition in 40 CFR 51.166(w)(2)(iv) and 40 CFR 51.165(f)(2)(iv), therefore we propose to approve this definition.

PAL Major Modification

Ohio has established the definition of “PAL major modification” in OAC 3745–31–01(GGGG). This is consistent with the definition in 40 CFR 51.166(w)(2)(viii) and 40 CFR 51.165(f)(2)(viii), therefore we propose to approve this definition.

PAL Permit

Ohio has established the definition of “PAL permit” in OAC 3745–31–01(HHHH). This is consistent with the definition in 40 CFR 51.166(w)(2)(ix) and 40 CFR 51.165(f)(2)(ix), therefore we propose to approve this definition.

PAL Pollutant

Ohio has established the definition of “PAL pollutant” in OAC 3745–31–01(IIII). This is consistent with the definition in 40 CFR 51.166(w)(2)(x) and 40 CFR 51.165(f)(2)(x), therefore we propose to approve this definition.

PAL Significant Emissions Unit

Ohio has established the definition of “PAL significant emissions unit” in OAC 3745–31–01(JJJJ). This is consistent with the definition in 40 CFR 51.166(w)(2)(xi) and 40 CFR 51.165(f)(2)(xi), therefore we propose to approve this definition.

PAL Small Emissions Unit

Ohio has established the definition of “PAL small emissions unit” in OAC 3745–31–01(KKKK). This is consistent with the definition in 40 CFR 51.166(w)(2)(iii) and 40 CFR 51.165(f)(2)(iii), therefore we propose to approve this definition.

Particulate Matter and Particulate Matter Emissions

Ohio referred to the definitions for particulate matter and particulate matter emissions from OAC 3745–17–01 which is already approved by EPA.

Plantwide Applicability Limit (PAL)

Ohio has established the definition of “plantwide applicability limit” in OAC 3745–31–01(OOOO). This is consistent with the definition in 40 CFR 51.166(w)(2)(v) and 40 CFR 51.165(f)(2)(v), therefore we propose to approve this definition.

PM₁₀, PM₁₀ Emissions, Total Suspended Particulate

Ohio has established the definitions of “PM₁₀”, “PM₁₀ emissions” and “total suspended particulate” in OAC 3745–31–01(PPPP), (QQQQ), and (UUUU). These definitions are consistent with 40 CFR 50 and 51, therefore we propose to approve these definitions.

Pollution Control Project (PCP)

Ohio has modified the definition of “pollution control project” in OAC 3745–31–01(RRRR). This is consistent with the definition in 40 CFR 51.166(b)(31) and 40 CFR 51.165(a)(1)(xxv), therefore we propose to approve this definition.

Pollution Prevention

Ohio has established the definition of “pollution prevention” in OAC 3745–31–01(SSSS). This is consistent with the definition in 40 CFR 51.166(b)(38) and 40 CFR 51.165(a)(1)(xxvi), therefore we propose to approve this definition.

Predictive Emissions Monitoring System (PEMS)

Ohio has established the definition of “predictive emissions monitoring system” in OAC 3745–31–01(SSSS). This is consistent with the definition in 40 CFR 51.166(b)(44) and 40 CFR 51.165(a)(1)(xxxii), therefore we propose to approve this definition.

Prevention of Significant Deterioration Increment

Ohio has established the definition of “prevention of significant deterioration increment” in OAC 3745–31–01(WWWW). This is consistent with the definition in 40 CFR 51.166(c), therefore we propose to approve this definition.

Prevention of Significant Deterioration Permit

Ohio has established the definition of “prevention of significant deterioration permit” in OAC 3745–31–01(XXXX). This is consistent with the definition in 40 CFR 51.166(b)(42) and 40 CFR 51.165(a)(1)(xli), therefore we propose to approve this definition.

Projected Actual Emissions

Ohio has established the definition of “projected actual emissions” in OAC 3745–31–01(ZZZZ). This is consistent with the definition in 40 CFR 51.166(b)(40) and 40 CFR 51.165(a)(1)(xxviii), therefore we propose to approve this definition.

Regulated NSR Pollutant

Ohio has established the definition of “regulated NSR pollutant” in OAC 3745–31–01(DDDD). This definition is consistent with the definition in 40 CFR 51.166(b)(49) and 40 CFR 51.165(a)(1)(xxxvii), therefore we propose to approve this definition.

Replacement Unit

Ohio has established the definition of “replacement unit” in OAC 3745–31–01(EEEE). This definition is consistent with the definition in 40 CFR

51.166(b)(32) and 40 CFR 51.165(a)(1)(xxi), therefore we propose to approve this definition.

Representative Actual Annual Emissions

Ohio has deleted this definition. It is not required by the federal program.

Significant

Ohio has modified the definition of “significant” in OAC 3745–31–01(KKKKK) to change the phrase “an air pollutant subject to regulation under the Clean Air Act” to “a regulated NSR pollutant.” This definition has also been modified to remove the reference to pollutants listed in section 112(b) of the Clean Air Act because section 112(b) pollutants are exempt from NSR. These changes are consistent with the definition in 40 CFR 51.166(b)(23) and 40 CFR 51.165(a)(1)(x), therefore we propose to approve this definition.

Significant Emissions Increase

Ohio has established the definition of “significant emissions increase” in OAC 3745–31–01(LLLLL). This is consistent with the definition in 40 CFR 51.166(b)(39) and 40 CFR 51.165(a)(1)(xxvii), therefore we propose to approve this definition.

Stationary Source

Ohio has modified the definition of “stationary source” in 326 IAC 2–2–1(zz) to change the phrase “pollutant subject to regulation under the CAA” to “regulated NSR pollutant.” This change is consistent with the definition in 40 CFR 51.166(b)(5) and 40 CFR 51.165(a)(1)(i), therefore we propose to approve this definition.

Non-40 CFR 51.166 and 51.165 Definitions

OAC 3745–31–01 (E), (J), (M), (X), (JJ), (QQ), (DDD), (EEE), (XXX), (HHHHH), and (XXXXX)

These definitions are associated with future changes to OAC 3745–31–03 relating to Ohio’s minor source permitting program. EPA proposes to approve these definitions.

Minor Revisions to Definitions

Ohio has made changes to the definitions of “available information,” “baseline area,” “baseline concentration,” “best available technology,” “Clean Air Act,” “Clean Coal Technology,” “Clean Coal Technology Demonstration Project,” “Construction,” “facility,” “non-methane organic compound,” “Non-road engine,” and “Temporary clean coal demonstration project,” that are grammatical in nature and do not

change the substance of the definition, therefore we propose to approve this definition.

Incorporation by Reference

Ohio has added the Aerometric Information Retrieval System, California Air Resources Board, Chemical Abstract Service, Chemical Rubber Company Handbook for Chemistry and Physics, Compilation of Air Pollutant Emission Factors, AP–42, Control Technology Center, Great Lakes Binational Toxics Strategy, Integrated Risk Management System, and Recommended Policy on Control of Volatile Organic Compounds to OAC 3745–31–01(ZZZZZ)(1). Ohio has removed the reference to the Further Continuing Appropriations Act of 1985 from this section.

Ohio has also updated and added to the incorporations by reference in OAC 3745–31–01(ZZZZZ)(2). Ohio has added references to 40 CFR 51.165; 40 CFR 60.15(b)(1); 40 CFR 60.111b; 40 CFR 81.336; 40 CFR part 50, appendix J; 40 CFR part 51, appendix M; 40 CFR part 51, appendix S; 40 CFR part 53; 40 CFR part 60, appendix A; 40 CFR part 60, subpart Dc; 40 CFR part 82, subpart A; 42 U.S.C. 7401 to 7671q; Chemical Rubber Company Handbook for Chemistry and Physics; Federal Power Act; New Source Performance Standards; Part C of Title I of the Clean Air Act; Part D of Title I of the Clean Air Act; Recommended Policy on Control of Volatile Organic Compounds; Section 2(A) and (B) of the Energy Supply and Environmental Coordination Act of 1974; Section 110 of the Clean Air Act; Section 107(d) of the Clean Air Act; Section 108 of the Clean Air Act; Section 109 of the Clean Air Act; Section 111 of the Clean Air Act; Section 112 of the Clean Air Act; Section 112(b) of the Clean Air Act; Section 112(c) of the Clean Air Act; Section 113 of the Clean Air Act; Section 121(e) of the Clean Air Act; Section 125 of the Clean Air Act; Section 173 of the Clean Air Act; Section 182(c) of the Clean Air Act; Section 182(f) of the Clean Air Act; Section 189 of the Clean Air Act; Section 202 of the Clean Air Act; Section 216 of the Clean Air Act; Section 402(12) of Title IV of the Clean Air Act; Section 409 of the Clean Air Act; Standard Industrial Classification Manual; Title II of the Clean Air Act; Title IV of the Clean Air Act, and Title VI of the Clean Air Act. Ohio has removed from OAC 3745–31–01(ZZZZZ)(2) Title II sec. 101(d) of the Further Continuing Appropriations Act of 1985.

OAC 3745–31–09 Air Permit To Install Completeness Determinations, Public Participation and Public Notice

Ohio has modified OAC 3745–31–09(H)(1) to replace the phrase “air contaminant source or modification” with “nonattainment NSR permit or the PSD permit”. This change is consistent with the changes in definitions required by 40 CFR 51.166(b)(42), 40 CFR 51.165(a)(1)(xxx) and 40 CFR 51.165(a)(1)(xli). Ohio also made a spelling correction in OAC 3745–31–09(H)(2)(d). Therefore we propose to approve this rule.

OAC 3745–31–10 Air Stationary Source Obligations

Ohio has added the source obligations in 40 CFR 51.166 (r). Ohio doesn’t include the requirements of 70.4(b)(3)(vii). Ohio also adds the language “if any provision of OAC 3745–31–10 through 3745–31–32 or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.” EPA proposes to approve these changes.

OAC 3745–31–13 Attainment Provisions—Review of Major Stationary Sources and Major Modifications, Stationary Source Applicability and Exemptions

Ohio has modified OAC 3745–31–13 (B) and (G) to replace the phrase “air pollutant subject to regulation under the Clean Air Act that the stationary source would emit, except for air pollutants listed under 112 of the Clean Air Act” and “air pollutant subject to regulation under the Clean Air Act” respectively with “regulated NSR pollutant”. This is consistent with 40 CFR 51.166(b)(49) and 40 CFR 51.165(a)(1)(xxxvii). Ohio also modified OAC 3745–31–13(D)(2)(d) by replacing the term “reviewing authority” with “director,” and OAC 3745–31–13(H) by clarifying that the units of measure are $\mu\text{g}/\text{m}^3$, and removing mercury, beryllium, and vinyl chloride. This is consistent with 40 CFR 51.166(i). Therefore we propose to approve this rule.

OAC 3745–31–15 Attainment Provisions—Control Technology Review

Ohio has modified OAC 3745–31–15(B) to include references to 40 CFR part 63 and OAC 3745–31–1 (C), and (D) to replace the phrase “air pollutant subject to regulation under the Clean Air Act excluding pollutants regulated due to being listed under Section 112 of the Clean Air Act” and “air pollutant

subject to regulation under the Clean Air Act” with “regulated NSR pollutant.” This is consistent with 40 CFR 51.166(b)(49) and 40 CFR 51.165(a)(1)(xxxvii). Therefore we propose to approve this rule.

OAC 3745–31–21 Nonattainment Provisions

Ohio has modified OAC 3745–31–21 (B) to replace the phrase “air pollutant subject to regulation under the Clean Air Act” with “regulated NSR pollutant”. This is consistent with 40 CFR 51.166(b)(49) and 40 CFR 51.165(a)(1)(xxxvii). Ohio also added language to OAC 3745–31–21 (E) to clarify that projects referenced therein are clean coal technology demonstration projects, and that “Section 111 and Part C” refer to Section 111 and Part C of the Clean Air Act. EPA proposes to approve these changes.

OAC 3745–31–22 Nonattainment Provisions—Conditions for Approval

In addition to grammatical updates to OAC 3745–31–22, Ohio has established OAC 3745–31–22(A)(3)(e) and (f) not permitting decreases from actual emissions from the installation of add-on control technology or application of pollution prevention measures and clean units or pollution control projects except as provided by the rule. This language is consistent with 40 CFR 51.165(a)(3)(ii)(H) and (I).

Ohio also established OAC 3745–31–22(A)(3)(g) providing the offset requirements for increased emissions from major modifications. This language is consistent with 40 CFR 51.165(a)(3)(ii)(J). Therefore we propose to approve this rule.

OAC 3745–31–24 Non-Attainment Provisions—Baseline for Determining Credit for Emission and Air Quality Offsets

In addition to grammatical updates to OAC 3745–31–24(A), (E) and (H), Ohio has established rules for establishing a baseline for determining credit for emission reductions in OAC 3745–31–24(B) and (C). This language is consistent with 40 CFR 51.165(a)(3)(i) and (ii)(A). Ohio has removed language describing the baseline time period and calculation of baseline emissions which primarily refer to the most recent two year period as the basis for the baseline. The federal program no longer has such a requirement.

Ohio also established OAC 3745–31–24(K) which requires all emission reductions claimed as offset credit to be federally enforceable. This language is consistent with 40 CFR

51.165(a)(3)(ii)(E). Therefore we propose to approve this rule.

OAC 3745–31–26 Nonattainment Provisions—Offset Ratio Requirements

Ohio has modified the VOC offset requirement provision in OAC 3745–31–26(A) to include an offset ratio for unclassified areas of greater than 1.0 to 1.0. This language is consistent with section 173(c) of the Clean Air Act. Therefore we propose to approve this rule.

OAC 3745–31–30 Clean Units

Ohio has added a new rule section for emission units that are subject to BACT or LAER and qualify for a clean unit designation. These rules, for the most part, are consistent with provisions at 40 CFR 51.166(t) and (u) and 40 CFR 51.165(c) and (d) for clean units. However, although Ohio intended only LAER to apply in nonattainment areas, as drafted, OAC 3745–31–30 is not clear that a LAER determination is required for a clean unit designation in an existing nonattainment area. The language in OAC 3745–31–30(A)(5)(a) must also include current-day LAER requirements for non-attainment areas, in addition to BACT for attainment areas.

In a March 2, 2005 letter to EPA, OEPA has committed to clarify its rules in this regard, and, until the rule is clarified, the conditionally approved rules will be implemented as requiring a LAER determination in nonattainment areas in order to obtain a clean unit designation. Therefore we propose to conditionally approve this rule.

OAC 3745–31–31 Pollution Control Project

OAC 3745–31–31 establishes a pollution control project exclusion provision in Ohio's permit to install regulations. This addition to Ohio's rule is consistent with the requirements in 40 CFR 51.166(v) and 40 CFR 51.165(e). Therefore we propose to approve this rule.

OAC 3745–31–32 Plantwide Applicability Limit (PAL)

This section of the Ohio permit to install rules regarding PAL applicability is consistent with 40 CFR 51.166(w) and 40 CFR 51.165(f). Therefore we propose to approve this rule.

III. Conditional Approval

A. Why are we proposing to conditionally approve Ohio's rules?

We are proposing to conditionally approve Ohio's permit to install rules, OAC 3745–31–30. These rules, for the most part, fulfill part C of title I of the

CAA by incorporating the critical provisions at 40 CFR 51.165 and 51.166 for clean units. However, although Ohio intended only LAER to apply in nonattainment areas, the proposed language of OAC 3745–31–30 does not make clear that a LAER determination is required for a clean unit designation in an existing nonattainment area. In addition to BACT for attainment areas, the language in OAC 3745–31–30(A)(5)(a) must also include current-day LAER requirements for non-attainment areas.

OEPA has committed, in a March 2, 2005 letter, to clarify its rules in this regard and, in the interim, to require a LAER determination in nonattainment areas in order to obtain a clean unit designation. Because OAC 3745–31–30 meets all requirements of 40 CFR 51.165 and 51.166 for clean units with the exceptions noted above, and because OEPA has committed to correct the deficiencies, we believe that it is appropriate to propose to conditionally approve these rules. Once OEPA submits the rule changes to address these deficiencies, we can take action to fully approve the State Implementation Plan (SIP) revision.

B. How can this conditional approval become fully approved?

OEPA will have one year from the time that the conditional approval is final to submit the necessary changes to its rules to correct the deficiencies identified in this action. If OEPA does not submit changes within the one year timeframe, this conditional approval will automatically revert to a disapproval of the Ohio SIP.

C. What are the ramifications for not submitting the necessary changes?

If OEPA fails to submit the necessary rule changes to us, final conditional approval will automatically convert to a disapproval. EPA would confirm such disapproval to the State by letter. If the SIP becomes disapproved, these commitments will no longer be a part of the approved SIP. We would subsequently publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment or commitments have been disapproved and removed from the SIP. If OEPA adopts and submits the final rule amendments to EPA within the applicable time frame, the conditionally approved commitments will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal, those newly approved rules will become part of the SIP.

If after considering the comments on the subsequent submittal, we issue a

final disapproval, the sanctions clock under 179(a) will begin. If OEPA does not submit and we do not approve the rule on which any disapproval is based within 18 months of the disapproval, we must impose one of the sanctions under section 179(b) highway funding restrictions or the offset sanction. In addition, any final disapproval would start the 24-month clock for the imposition of section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after final disapproval.

IV. What Action Is EPA Taking Today?

EPA is proposing conditional approval of Ohio permit to install revisions. On December 31, 2002, EPA published revisions to the federal PSD and NSR regulations in 40 CFR parts 51 and 52 (67 FR 80186). These "NSR Reform" regulatory revisions became effective on March 3, 2003, and include provisions for baseline emissions determinations, actual-to-future actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). EPA is proposing to conditionally approve OEPA's revised rules to implement these NSR Reform provisions.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission,

to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 29, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05-9403 Filed 5-10-05; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC DOCKET NO. 03-225; FCC 05-71]

Request To Update Default Compensation Rate for Dial-Around Calls From Payphones

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks current and accurate data on the average number of compensable dial-around calls made from payphones on a monthly basis. This average monthly data will be used to calculate a monthly per-payphone default compensation rate, which will apply to payphones that are not connected to Flex ANI, a call-tracking technology.

DATES: Submit comments on or before June 27, 2005. Submit reply comments on or before July 25, 2005.

ADDRESSES: You may submit comments, identified by WC Docket No. 03-225, by any of the following methods:

- Federal eRulemaking Portal: <http://regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.fcc.gov>. Follow the instructions for

submitting comments on our electronic Web site: http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html.

- E-mail: Jon.Stover@fcc.gov. Include WC Docket No. 03–225 in the subject line of the message.

- Fax: (202) 418–1567

- Mail: Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

- Hand Delivery/Courier: Secretary, Federal Communications Commission, Office of the Secretary, c/o Natek, Inc. 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html and/or Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jon Stover, Wireline Competition Bureau, Pricing Policy Division, (202) 418–0390.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in WC Docket No. 03–225, adopted on March 10, 2005 and released on March 14, 2005. The complete text of this Further Notice of Proposed Rulemaking (FNPRM) is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet Site at <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the FNPRM may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445

Twelfth Street, SW., Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or e-mail at <http://www.bcpweb.com>.

Synopsis of Further Notice of Proposed Rulemaking

1. When the Commission initially adopted a payphone compensation rule pursuant to 47 U.S.C. 276(b)(1)(A), many carriers lacked reliable systems for tracking dial-around calls. In the Commission's First Payphone Report and Order, it ordered compensation to be paid initially on a per-phone, rather than a per-call basis. To arrive at the total per-payphone rate, the Commission calculated that 131 dial-around calls were placed from the average payphone per month. When this average volume amount was multiplied by the then current per-call default rate of \$.35, the result yielded a per-phone compensation rate of \$45.85 per month.

2. Since the release of the First Payphone Report and Order, approximately 95 percent of all payphones have been connected to Flex ANI, a call-tracking technology that accurately tracks payphone calls from the payphone instrument to the called party. The remaining five per cent of payphones, which are generally located in remote and rural geographic areas are not connected to Flex ANI. With this FNPRM, the Commission continues to implement the requirements of 47 U.S.C. 276 of the Communications Act of 1934, as amended, which directs the Commission to "promote the widespread deployment of payphone services to the benefit of the general public."

3. Although the Commission recently increased the per-call rate to \$.494, it has not updated the average number of dial-around calls per payphone since 1997. The record in this proceeding indicates that since 1998, there has been a significant decline in per-payphone call volumes. If dial-around call volumes have followed the same trend as overall call volumes, the data sought by this FNPRM will probably also have significantly declined.

4. Finally, once the Commission receives the updated volumetric data, it will calculate a new monthly per-payphone rate based on the new data and the existing per-call rate. The new monthly rate will ensure that all payphone service providers are "fairly compensated" for each and every completed intrastate and interstate call using their payphone.

Initial Paperwork Reduction Act Analysis

5. This FNPRM contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days after date of publication in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–XXXX.

Title: Request to Update Default Compensation Rate for WC Docket No. 03–225 Dial-Around Calls from Payphones.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 100 hours.

Frequency of Response: One time.

Estimated Total Annual Burden: 1000 hours.

Estimated Total Annual Costs: 0.

Privacy Act Impact Assessment: N/A.

Needs and Uses: We seek additional data to enable us to determine a more accurate estimate of the average number of compensable dial-around calls at a payphone. We urge payphone service providers (PSPs) to provide us with current data showing the average number of compensable dial-around calls placed at their payphones. We request that parties submitting data provide details that will enable us to evaluate the data and determine how to

use the data. Data submissions should include, if possible, details showing how the data were gathered, how samples were selected, the total number of payphones of each type (e.g., "dumb" vs. "smart," regional Bell Operating Companies (RBOC) vs. independent) in the sample and in the population from which the sample was taken, and the types of locations represented in the sample. Attempts to gain advantage by failing to provide us with the necessary context to evaluate their submissions will result in their data being discounted or rejected. We invite parties to submit information on the number of payphones that currently are located in non-equal access areas and in areas where small telephone companies have received a waiver of the Flex ANI requirement, and on the average number of compensable dial-around calls originating from such payphones.

6. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street SW., Washington, DC 20554, or via the Internet to Judith B. Herman@fcc.gov, and to Kristy L. Lalonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to Kristy L. LaLonde@omb.eop.gov.

Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rule proposed in the FNPRM.

8. With this FNPRM, the Commission continues its implementation of the statutory objectives of section 276 of ensuring payphone service providers are fairly compensated and promoting the widespread deployment of payphones.

Need for, and Objectives of, the Proposed Rules

9. The Commission's goal in this proceeding is to ensure that all payphone service providers are fairly compensated. Once this proceeding is completed, all payphone operations including those not connected to Flex ANI will be receiving fair compensation for all completed intrastate and interstate calls made from payphones.

Legal Basis

10. The legal basis for any action that may be taken pursuant to this FNPRM

is contained in sections 1–5, 7, 10, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–55, 157, 160, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502, and 503 and sections 1.1, 1.421 of the Commission's rules, 47 CFR 1.1, 1.421.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

11. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632.

12. In this section, the Commission further describes and estimates the number of small entity licensees and regulates that may also be indirectly affected by rules adopted pursuant to this FNPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the Commission discusses the total estimated numbers of small businesses that might be affected by its actions.

13. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of

999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

14. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 37 carriers reported that they were "Other Local Exchange Carriers." Of the 37 "Other Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

15. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 281 companies reported that they were interexchange carriers. Of these 281 companies, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

16. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to

Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

17. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

18. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected

by the rules and policies adopted herein.

19. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

20. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

21. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

22. *Prepaid Calling Card Providers*. The SBA has developed a size standard for a small business within the category

of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

23. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by its action.

24. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

25. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees.

Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

26. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

27. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

28. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001,

the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

29. *Narrowband Personal Communications Services.* The Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*, 65 FR 35875, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

30. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

31. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won

licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

32. 800 MHz and 900 MHz

Specialized Mobile Radio Licenses. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than \$40 million in each of the three previous calendar years, or that had revenues of no more than \$15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

33. *Private and Common Carrier Paging.* In the *Paging Third Report and*

Order, 62 FR 16004, April 3, 1997, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

34. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, 65 FR 3139, January 20, 2000, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a

small business that won a total of two licenses.

35. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licenses in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

36. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

37. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and

161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

38. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission noted, however, that the common carrier microwave fixed licensee category includes some large entities.

39. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other

Wireless Telecommunications” services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

40. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity. The Commission concludes that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

41. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for “very small business” is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

42. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three

calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concluded that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

43. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. The SBA has approved these size standards. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218–219 MHz spectrum.

44. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977

firms in this category that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

45. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

46. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 31 carriers reported that they were engaged in the provision of satellite services. Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and six, alone or in combination with affiliates, have more than 1,500 employees. Consequently, the Commission estimates that there are 31 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

47. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms

in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

48. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

49. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." The Commission notes that, in this FNPRM, it has described activities such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

50. This supplemental IRFA seeks current and accurate monthly data on the average number of compensable dial-around calls per-payphone. Once the new data is collected, the new rate will not impose any new reporting, recordkeeping or other compliance requirements for small entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

51. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

52. In this FNPRM, the Commission only seeks to collect current and accurate data on the average number of compensable dial-around calls per-payphone. Nevertheless, the Commission seeks comments on alternatives that will minimize any potential burdens caused by the need to collect current and accurate monthly per-payphone data.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

53. Implementation of the rule change the Commission is considering in this FNPRM will require updating the monthly per-payphone rate that will be established once a current and accurate average number of compensable dial-around calls is determined. The section of the Commission's rules that will likely be amended is 47 CFR 64.1301.

Comment Filing Procedures

54. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 27, 2005, and reply comments on or before July 25, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking

number, in this case, WC Docket No. 03–225. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, “get form.” A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

55. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission’s ECFS.

56. The Commission’s contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

57. All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554, or by e-mail to victoria.goldberg@fcc.gov. Parties shall also serve one copy with the Commission’s copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to fcc@bcpiweb.com.

58. Documents in WC Docket No. 03–225 are available for public inspection

and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail fcc@bcpiweb.com.

Ordering Clauses

59. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–5, 7, 10, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 157, 160, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502, and 503 and sections 1.1, 1.421 of the Commission’s rules, 47 CFR 1.1, 1.421, *notice is hereby given* of the rulemaking and *comment is sought* on those issues.

60. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

2. Amend § 64.1301 by revising paragraph (e) to read as follows:

§ 64.1301 Per-Payphone compensation.

* * * * *

(e) Post-intermediate access code and subscriber 800 calls. In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix C of the Fifth Order on Reconsideration and Order on Remand in CC Docket No.

96–128, FCC 02–292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning April 21, 1999, and ending _____, in the amount listed in Appendix C for any payphone for any month during which per-call compensation for that payphone for that month is not paid by the listed entity. A complete copy of Appendix C is available at <http://www.fcc.gov>. Effective _____, the default compensation to be paid by each entity shall be the amount listed in Appendix C multiplied by ____.

[FR Doc. 05–9097 Filed 5–10–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1145, MB Docket No. 04–317, RM–11004, RM–11118]

Radio Broadcasting Services; Center, TX and Logansport, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of Team Broadcasting Company, Inc. and Charles Crawford, the Audio Division dismisses the two petitions for rule making proposing the allotment of Channel 248A at Center, Texas the community’s second local FM transmission service (RM–11004). *See* 69 FR 51415, August 19, 2004. At the request of Logansport Broadcasting, we also dismiss the counterproposal proposing the allotment of Channel 248A at Logansport, Louisiana (RM–11118). A showing of continuing interest is required before a channel will be allotted. It is the Commission’s policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we will grant the requests to dismiss the Center, Texas and Logansport, Louisiana petitions.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Report and Order, MB Docket No. 04–317, adopted April 25, 2005, and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-9291 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-1151; MB Docket No. 05-177]

Radio Broadcasting Services; Bairoil and Sinclair, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division, on its own motion, proposes the substitution of Channel 235A for vacant Channel 265A at Bairoil, Wyoming and the substitution of Channel 267C for vacant Channel 262C at Sinclair, Wyoming. The existing allotments at Bairoil and Sinclair are not in compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. The existing Channel 265A at Bairoil and existing Channel 262C at Sinclair are short-spaced to each other by 57.2 kilometers. The minimum distance spacing requirement for these allotments is 95 kilometers. Additionally, Channel 262C at Sinclair is short-spacing to licensed FM Station KYOD, Channel 261C1, Glendo, Wyoming by 186.4 kilometers. The minimum distance spacing requirement is 209 kilometers. A staff engineering analysis has determined that Channel 235A can be allotted to Bairoil, Wyoming in conformity with the Commission's rules without a site restriction at coordinates 42-14-40 NL and 107-33-32 WL. Moreover, Channel 267C can be allotted to Sinclair, Wyoming consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction

of 9.6 kilometers (6 miles) west at coordinates 41-46-19 NL and 107-13-40 WL.

DATES: Comments must be filed on or before June 20, 2005 and reply comments on or before July 5, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 05-177, adopted April 25, 2005, and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

The FM Table of Allotments lists Channel 281A in lieu of Channel 265A at Bairoil, Wyoming. Channel 281A was inadvertently added to Bairoil. *See* 65 FR 45720, published July 25, 2000.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 281A and adding Channel 235A at Bairoil and by removing Channel 262C and adding Channel 267C at Sinclair.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-9292 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-1148, MB Docket No. 02-289, RM-10526, RM-10771]

Radio Broadcasting Services; Idaho Falls and Iona, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division, at the request of Scott D. Parker, dismisses the petition for rule making proposing the allotment of Channel 300C1 at Idaho Falls, Idaho, as the community's six local commercial FM transmission service (RM-10526). *See* 67 FR 63874, October 16, 2002. At the request of Sand Hill Media Corporation, we also dismiss the counterproposal proposing the substitution of Channel 299C1 for Channel 296C1, the reallocation of Channel 299C1 from Idaho Falls to Iona, Idaho, and the modification of Station KQEO(FM)'s license accordingly (RM-10771). A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we will grant the requests to dismiss the Idaho Falls and Iona, Idaho petitions.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-289, adopted April 25, 2005, and released

April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-9293 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-1144; MB Docket No. 04-331; RM-11053]

Radio Broadcasting Services; Washington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In response to a Notice of Proposed Rule Making ("Notice"), 69 FR 54614 (September 9, 2004), this *Report and Order* dismisses the underlying Petition for Rule Making requesting the allotment of Channel 271A at Washington, Kansas, because no comments or expressions of interest in response to the notice were received.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04-331, adopted April 25, 2005, and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20054. The document may also be purchased from the Commission's duplicating contractor,

Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Report and Order* to GAO pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule is dismissed.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-9294 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-1143, Docket No. 04-362, RM-11066]

Radio Broadcasting Services; Olustee, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a petition for rule making filed by Charles Crawford to allot Channel 252A at Olustee, Oklahoma for failure to state a continuing interest in the requested allotment. *See* 69 FR 57898, published September 28, 2004. This document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau (202) 418-2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04-362, adopted April 25, 2005 and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

This document is not subject to the Congressional Review Act. (The

Commission is, therefore, not required to submit a copy of this Report and Order to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule was dismissed.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-9295 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH57

Endangered and Threatened Wildlife and Plants; Reclassification of the Gila Trout (*Oncorhynchus gilae*) From Endangered To Threatened With Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the federally endangered Gila trout (*Oncorhynchus gilae*) to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act). Based on a review of the species' current status, we have determined that reclassification of the Gila trout to threatened status is warranted. We are also proposing a special rule under section 4(d) of the Act that would apply to Gila trout found in New Mexico and Arizona. If finalized, the special rule included in this proposal would enable the New Mexico Department of Game and Fish (NMDGF) and the Arizona Game and Fish Department (AGFD) to promulgate special regulations in collaboration with the Service, allowing recreational fishing of Gila trout, beginning on the date that the final 4(d) rule becomes effective.

DATES: We will consider all comments on the proposed rule received from interested parties by July 15, 2005. We will hold public hearings on this proposed rule; we have scheduled the hearings for June 28, 2005 in Phoenix, Arizona and on June 29, 2005 in Silver City, New Mexico (see Public Hearing in the **SUPPLEMENTARY INFORMATION** section of this rule for dates).

ADDRESSES:

1. Send your comments on this proposed rule to the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. Written comments may also be sent by facsimile to (505) 346-2542 or through electronic mail to R2FWE_AL@fws.gov. You may also hand-deliver written comments to our New Mexico Ecological Services Field Office, at the above address. You may obtain copies of the proposed rule and other related documents from the above address or by calling (505) 346-2525. The proposed rule is also available from our Web site at <http://ifw2es.fws.gov/Library/>.

2. The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office (see ADDRESSES above).

3. The public hearings will be held in Phoenix, Arizona on June 28, 2005 and in Silver City, New Mexico on June 29, 2005.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, State Supervisor, New Mexico Ecological Services Field Office (see ADDRESSES above).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend to make any final action resulting from this proposed rule to be as accurate and as effective as possible. Therefore, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why Gila trout should or should not be reclassified with a special rule, as provided by section 4 of the Act;

2. Information concerning angling opportunities that may be affected by this action in New Mexico or Arizona and how the special rule might affect these uses; and

3. Comments on how the special rule could further the conservation of the Gila trout beyond what we have discussed in this rule.

Background

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of those species. Species can be listed as threatened and endangered because of any of the following factors: (1) The present or

threatened destruction, modification, or curtailment of its habitat or range, (2) overutilization for commercial, recreational, scientific, or educational purposes, (3) disease or predation, (4) the inadequacy of existing regulatory mechanisms, and (5) other natural or manmade factors affecting its continued existence. When we determine that protection of the species under the Act is no longer warranted, we take steps to remove (delist) the species from the Federal list. If a species is listed as endangered, we may reclassify it to threatened status as an intermediate step before eventual delisting, if it has met the criteria for downlisting to threatened; however, reclassification to threatened status is not required in order to delist.

Section 3 of the Act defines terms that are relevant to this proposal. An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.

Previous Federal Action

The Gila trout was originally recognized as endangered under the Federal Endangered Species Preservation Act of 1966 (32 FR 4001), and Federal designation of the species as endangered continued under the Act (1973). In 1987, the Service proposed to reclassify the Gila trout as threatened (October 6, 1987, 52 FR 37424). However, we withdrew our proposal for reclassification in 1991 (September 12, 1991) (see "Recovery Plans and Accomplishments" section below for further information). On November 11, 1996, Mr. Gerald Burton submitted a petition to us to downlist the species from endangered to threatened. We acknowledged receipt of the petition by letter on January 13, 1997. This proposed rule constitutes our 90-day finding and 12-month finding on the November 11, 1996, petition.

Systematics

The Gila trout is a member of the salmon and trout family (Salmonidae). Gila trout was not formally described until 1950, using fish collected in Main Diamond Creek in 1939 (Miller 1950). It is most closely related to Apache trout (*Oncorhynchus apache*), which is endemic to the upper Salt and Little Colorado River drainages in east-central

Arizona. Gila trout and Apache trout are more closely related to rainbow trout (*O. mykiss*) than to cutthroat trout (*O. clarki*), suggesting that Gila and Apache trouts were derived from an ancestral form that also gave rise to rainbow trout (Behnke 1992; Dowling and Childs 1992; Utter and Allendorf 1994; Nielsen *et al.* 1998; Riddle *et al.* 1998).

Physical Description

The Gila trout is readily identified by its iridescent gold sides that blend to a darker shade of copper on the opercles (gill covers). Spots on the body are small and profuse, generally occurring above the lateral line and extending onto the head, dorsal (back, top) fin, and caudal (tail) fin. Spots are irregularly shaped on the sides and increase in size on the back. On the dorsal surface of the body, spots may be as large as the pupil of the fish eye and are rounded. A few scattered spots are sometimes present on the anal fin, and the adipose fin (fleshy fin located behind dorsal fin) is typically large and well-spotted. Dorsal, pelvic, and anal fins have a white to yellowish tip that may extend along the leading edge of the pelvic fins. A faint, salmon-pink band is present on adults, particularly during spawning season when the normally white belly may be streaked yellow or reddish orange. A yellow cutthroat mark is present on most mature specimens. Parr marks (diffuse splotches on the sides of body, usually seen on young trout) are commonly retained by adults, although they may be faint or absent (Miller 1950; David 1976).

Characteristics that distinguish Gila trout from other co-occurring, non-native trout include the golden coloration of the body, parr marks, and fine, profuse spots above the lateral line. These characters differentiate Gila trout from rainbow, brown (*Salmo trutta*), and cutthroat trouts. Roundtail chub (*Gila robusta*) are locally confused with Gila trout (Minckley 1973). The two species share a similar distribution, although roundtail chub typically occurs at lower elevations than Gila trout currently occupies. The two species may be confused partly because roundtail chub are occasionally caught by anglers fishing where both species occur together. The roundtail chub, a minnow (family Cyprinidae) whose adult size is similar to Gila trout's, differs from Gila trout (family Salmonidae) by its body shape and coloration. The roundtail chub lacks an adipose fin and has a narrow caudal peduncle (the segment of the body to which the tail fin is attached). Also, roundtail chub lack parr marks, golden coloration, yellow cutthroat marks, and

salmon-pink band found on Gila trout. Roundtail chub are typically a mottled olive or dark silver color above the lateral line, and body coloration lightens to a light silvery hue below the lateral line (Sublette *et al.* 1990).

Distribution and Threats

The extent of the historical distribution of the Gila trout is not known with certainty (Behnke 2002). It is known to be native to higher elevation streams in portions of the Gila River drainage, New Mexico. According to anecdotal reports, in 1896 Gila trout were found in the Gila River drainage, New Mexico, from the headwaters downstream to a box canyon, about 11.3 km (7 mi) northeast of Cliff, New Mexico (Miller 1950). By 1915, the downstream distribution of Gila trout in the Gila River had receded upstream to Sapillo Creek, a distance of approximately 25 km (15 mi) (Miller 1950). By 1950, water temperature in the Gila River at Sapillo Creek was considered too warm to support any trout species (Miller 1950). The earliest documented collections of Gila trout in the upper Gila River drainage were in 1939, from Main Diamond Creek (Miller 1950). New populations were sporadically found until 1992 when Gila trout were discovered in Whiskey Creek, a tributary to the upper West Fork Gila River (Service 2003).

Miller (1950) documented changes in suitability of habitats for Gila trout in the upper Gila drainage. Unregulated livestock grazing and logging likely contributed to habitat modifications noted by Miller (1950). The historical occurrence of intensive grazing and resulting effects on the land (*e.g.*, increased sedimentation by removal of riparian vegetation and increased runoff rates due to soil compaction) are indicated in published reports dating back to the early 1900s (Rixon 1905; Rich 1911; Duce 1918; Leopold 1921; Leopold 1924). Logging activities also likely caused major changes in watershed characteristics and stream morphology. Rixon (1905) reported the occurrence of small timber mills in numerous canyons of the upper Gila River drainage. Early logging efforts were concentrated along canyon bottoms, often with perennial streams. Tree removal along perennial streams within the historical range of Gila trout likely altered water temperature regimes, sediment loading, bank stability, and availability of large woody debris (Chamberlin *et al.* 1991).

When the Gila trout was listed as endangered, it was thought that its range had been reduced to five streams within the Gila National Forest, New Mexico:

Iron, McKenna, Spruce, Main Diamond, and South Diamond. In 1998, it was determined that the McKenna and Iron Creek populations had hybridized with rainbow trout and therefore, did not contribute to the recovery of the species because they are not pure (Leary and Allendorf 1998; Service 2003). In 1992, another original pure population (*i.e.*, relict population) of Gila trout was discovered in Whiskey Creek (Leary and Allendorf 1998). Consequently, there are four confirmed original pure populations known today. Reasons for listing the Gila trout as endangered included hybridization, competition, and/or predation by non-native rainbow, cutthroat, and brown trout, and habitat degradation.

Occurrence of Gila trout in tributaries to the Gila River in Arizona is less certain, although these streams harbored a native trout. Native trout occurred in the Eagle Creek drainage, a tributary of the Gila River in Arizona located west of the San Francisco River drainage (Minckley 1973; Kynard 1976). The identity of this native trout, now lost through hybridization with rainbow trout, is uncertain (Marsh *et al.* 1990). Native trout were reported from Oak Creek, a tributary to the Verde River, before the turn of the century (Miller 1950). Four specimens collected from Oak Creek before 1890 were ascribed to Gila trout (Miller 1950; Minckley 1973). Native trout were also reported from West Clear Creek, another Verde River tributary (Miller 1950). Trout collected in 1975 from Sycamore Creek, a tributary of Agua Fria, were reported to be Gila x rainbow trout hybrids. However, this determination was based solely on examination of spotting pattern (Behnke and Zarn 1976). Unfortunately, no pure Gila trout are extant from Arizona tributaries to the Gila River and scientists are unable to make a clear determination of the identity of the four remaining preserved specimens that were collected from Oak Creek (Miller 1972).

Habitat Characteristics

Nursery and rearing habitats are areas used by larval and juvenile Gila trout. Although no studies have been done on habitat use by these life stages of Gila trout, generalizations can be made based on characteristics of related trout species. Suitable nursery habitat for trout includes areas with slow current velocity such as stream margins, seeps, shallow bars, and side channels (Behnke 1992). Low flows during emergence from the egg and early growth of larval trout may result in strong year classes (young fish are not displaced downstream) (Behnke 1992), as may

constant, elevated flows during summer (improved water quality) (Service 2003). Absence of predation by non-native trout, particularly brown trout, is another essential element of nursery and rearing habitat.

Subadult and adult habitats are defined as areas suitable for survival and growth of these life stages. Subadults are sexually immature individuals, generally less than 150 millimeters (mm) (6 inches (in)) total length and adults are sexually mature individuals typically greater than 150 mm (6 in) total length (Propst and Stefferud 1997). Subadult Gila trout occur primarily in riffles (shallow water flowing over cobbles), riffle-runs, and runs, while adults are found mainly in pools (Rinne 1978). Cover (large woody debris, undercut banks, boulders, deep water, and overhanging woody and herbaceous vegetation) is an important component of subadult and adult habitat (Stefferdud 1994). The quantity and quality of adult habitat typically limits the trout population biomass (Behnke 1992). Essential elements of subadult and adult habitat relate principally to channel dimensions, cover, and hydrologic variability. Absence of competition with non-native trouts (brown and rainbow) for foraging habitat is also an essential element of subadult and adult habitat.

Variation in stream flow is a major factor affecting subadult and adult population size (McHenry 1986, Turner 1989, Propst and Stefferud 1997). In particular, high flow events may cause marked decrease in population size. These events result in short-term, radical changes in habitat conditions, primarily in flow velocity. Because most streams occupied by Gila trout have relatively narrow floodplains, the forces associated with high flow events are concentrated in and immediately adjacent to the bankfull channel. High stream flow velocities cause channel scouring and displacement of fish downstream, often into unsuitable habitats (Rinne 1982).

Overwintering habitat is defined as areas that afford shelter during periods of low water temperature, generally from November through February. Rinne (1981) and Propst and Stefferud (1997) indicated the importance of pool habitat for overwinter survival of Gila trout. Essential elements of overwintering habitat are deep water with low current velocity and protective cover (Behnke 1992). These elements are important because small streams can freeze, but the presence of deep pools provides areas that do not freeze. Trout are typically more sluggish in the winter and cover is important to protect them

from predators. Barriers to fish movement (e.g., waterfalls, dry stream bed) that prevent fish from accessing overwintering habitat may impact populations of Gila trout. Gila trout are now restricted to small headwater streams that typically have fewer deep pools and less suitable overwintering habitat than do larger streams (Harig and Fausch 2002).

Life History

Spawning occurs mainly in April (Rinne 1980) when temperatures are 6 to 8°C (43 to 46°F); however, day length may also be an important cue. Stream flow is apparently of secondary importance in triggering spawning activity (Rinne 1980). Young fish less than 25 mm (1.0 in) in length emerge from gravel nests 56 to 70 days after egg deposition (Rinne 1980). By the end of their first summer, young attain a total length of 70 to 90 mm (2.7 to 3.5 in) at lower elevation streams and 40 to 50 mm (1.6 to 2.0 in) at higher elevation sites (Rinne 1980; Turner 1986). Growth rates are variable, but Gila trout generally reach 180 to 220 mm (7.1 to 8.7 in) total length by the end of the third growing season in all but higher elevation streams. On average, for every 100 eggs that hatch, only two fish will survive to become adults (Brown *et al.* 2001).

Females reach maturity at age 2 to 4 at a minimum length of about 130 mm (5 in) (Nankervis 1988, Propst and Stefferud 1997). Males typically reach maturity at age 2 or 3. Most Gila trout live to about age 5 (Turner 1986), with a maximum age of 9 reported by Nankervis (1988). Thus, the majority of female Gila trout only spawn once and most males only spawn two or three times.

Aquatic insects are the primary food of Gila trout. Regan (1966) reported that adult flies, caddisfly larvae, mayfly nymphs, and aquatic beetles were the most abundant food items in the stomachs of Gila trout in Main Diamond Creek. There was little variation in food habits over the range of size classes sampled (47 to 168 mm (1.8 to 6.6 in) total length). Gila trout diet shifted seasonally as the relative abundance of various prey changed. Insect taxa consumed by Gila trout were also common in stomach contents of non-native trout species in the Gila River drainage, indicating the potential for interspecific competition. Hanson (1971) noted that Gila trout established a feeding hierarchy in pools during a low flow period in Main Diamond Creek. Larger fish aggressively guarded their feeding stations and chased away smaller fish. Large Gila trout

occasionally consume speckled dace and may also cannibalize smaller Gila trout (Van Eimeren 1988; Propst and Stefferud 1997).

Adult Gila trout are typically sedentary and movement is influenced by population density and territoriality (Rinne 1982). Although individual fish may move considerable distances (e.g., over 1.5 km (0.9 mi)), Rinne (1982) found that after eight months, 75 percent of tagged fish were less than 100 m (328 ft) from their release sites in Main Diamond, South Diamond, and McKnight Creeks. Gila trout showed a tendency to move upstream in South Diamond Creek, possibly to perennial reaches with suitable pool habitat in response to low summer discharge. Downstream movement in Main Diamond and McKnight Creeks involved primarily smaller fish and probably occurred because of nocturnal migrations (nighttime dispersal) or displacement downstream during flooding (Rinne 1982). High density of log structures in Main Diamond Creek appeared to reduce mobility of Gila trout in that stream (Rinne 1982).

Factors affecting population size and dynamics of Gila trout are not well understood. Inferences about factors that control population size have been made from analysis of time-series data (Turner and McHenry 1985, Turner 1989, Propst and Stefferud 1997). Hydrologic variability appears to be most important in regulating population size of Gila trout in many of the streams occupied by the species (e.g., Regan 1966, Mello and Turner 1980, McHenry 1986, Turner 1989, Brown *et al.* 2001). Gila trout populations typically have high densities during relatively stable flow periods (Platts and McHenry 1988). The overall importance of environmental factors, specifically drought and flooding, that can occur following a fire due to a loss of vegetation, are critical factors in determining persistence of Gila trout populations. Examples of the effects of severe wildfires and subsequent floods and ash flows are the elimination of the Gila trout populations from Main Diamond Creek (1989) and South Diamond Creek (1995).

Recovery Plans and Accomplishments

The original recovery plan for Gila trout was completed in 1979. The main objective of this recovery plan was "To improve the status of Gila trout to the point that its survival is secured and viable populations of all morphotypes are maintained in the wild" (Service 1979). The Gila Trout Recovery Plan was revised in 1984 with the same objective as the original plan.

Downlisting criteria in the plan stated that "The species could be considered for downlisting from its present endangered status to a threatened status when survival of the four original ancestral populations is secured and when all morphotypes are successfully replicated or their status otherwise appreciably improved" (Service 1984). Replication involves either moving individuals from a successfully reproducing original pure or replicated population or taking hatchery-propagated fish and releasing them into a renovated stream. In 1987, we proposed that Gila trout be reclassified from endangered to threatened with a special rule to allow sport fishing (52 FR 37424). At that time, Gila trout populations were deemed sufficiently secure to meet criteria for reclassification to threatened as identified in the Plan (52 FR 37424). However, the proposed rule to downlist Gila trout was withdrawn in 1991 (September 12, 1991, 56 FR 46400) because:

1. Severe flooding in 1988 reduced the Gila trout populations in McKnight Creek by about 80 percent;
2. Wild fires in 1989 eliminated Gila trout from Main Diamond Creek and all of the South Diamond drainage except Burnt Canyon, a small headwater stream;
3. Propagation activities at hatcheries had not proceeded as planned and fish were not available to replenish wild stocks; and
4. Brown trout, a predator, was present in Iron Creek, which at the time was thought to harbor one of the original pure populations of Gila trout.

The Gila Trout Recovery Plan was revised in 1993 to incorporate new information about ecology of the species and recovery methods. Criteria for downlisting remained essentially the same as in the 1984 revision but were more specific. The 1993 plan specified that downlisting would be considered "when all known indigenous lineages are replicated in the wild" and when Gila trout were "established in a sufficient number of drainages such that no natural or human-caused event may eliminate a lineage." The recovery plan was revised again in 2003 (Service 2003). The criteria for downlisting in the 2003 Recovery Plan include the following: (1) The four known non-hybridized indigenous lineages are protected and replicated in the wild in at least 85 km (53 mi) of streams; (2) each known non-hybridized lineage is replicated in a stream geographically separate from its remnant population such that no natural or human-caused event may eliminate a lineage; and (3)

an Emergency Evacuation Procedures Plan for Gila Trout (Emergency Plan) to address wildfire impacts and discovery of non-native salmonid invasion in Gila trout streams has been developed and implemented.

Today three of the four original pure populations (Main Diamond, South Diamond, and Spruce Creeks) are replicated at least once. The Service believes the three replicated populations are secure and the viability of the Gila trout is sufficiently protected through these three populations. The species is no longer in danger of extinction. Whiskey Creek, the fourth pure population, is not replicated. The Service believes that a small population of Gila trout remains in Whiskey Creek and that it may be possible to replicate the Whiskey Creek population in the future. Work will continue to conserve the Whiskey Creek lineage, if possible. Whiskey Creek is considered a harsh environment, and the Gila trout population there has been in a tenuous situation. A broodstock management plan and an Emergency Plan have been

completed (Kincaid and Reisenbichler 2002; Service 2004). Recovery actions have included chemically treating streams within the historic range of the species to remove non-native fish species, removing non-native trout by electrofishing, and constructing physical barriers to prevent movement of non-natives into renovated reaches (Service 2003).

Surveys of the 12 existing populations indicate that the recovery efforts to remove non-native fish and prevent their return to the renovated areas have been successful (Service 2003). Replicated populations in New Mexico are successfully reproducing, indicating that suitable spawning and rearing habitats are available. Replicated populations in Arizona exist in Raspberry and Dude Creeks. Young of the year were planted in Raspberry Creek in Arizona in 2000. In 2004, Gila trout in Raspberry Creek were found in mixed size classes, indicating that the fish spawned and successfully recruited. Although some fish were removed from Raspberry Creek due to

the threat of wildfire, some of these fish were restocked in November 2004 into the uppermost portions of Raspberry Creek, which survived the impacts caused by the fire and which still support Gila trout. The status of the population at Raspberry Creek will be reassessed in 2005. Factors limiting reproduction in Dude Creek in Arizona are not known.

Overall, there has been an increase in the total wild population of Gila trout. In 1992, the wild populations of Gila trout were estimated to be less than 10,000 fish greater than age 1. In 2001, the population in New Mexico was estimated to be 37,000 fish (Brown *et al.* 2001). As noted above, Gila trout were more recently replicated in Arizona; as such, we do not have estimated numbers of fish at this time. The stream renovation and transplantation efforts have been accomplished jointly by the Service, Forest Service, NMDGF, AGFD, and New Mexico State University. Original pure populations and their replicates are summarized in Table 1.

TABLE 1.—SUMMARY AND STATUS OF STREAMS INHABITED BY GILA TROUT AS OF JANUARY 2001 (ORIGINAL PURE POPULATION (*i.e.*, RELICT) LINEAGES IN BOLD)

State	County	Stream name	Drainage	km (mi) of stream inhabited	Origin
NM	Sierra	Main Diamond Creek	East Fork Gila River	6.1 (3.8)	Relict Lineage Eliminated in 1989, re-established in 1994.
NM	Grant	McKnight Creek	Mimbres River	8.5 (5.3)	Replicate of Main Diamond, est. 1970.
NM	Grant	Black Canyon	East Fork Gila River	18.2 (11.3)	Replicate of Main Diamond, est. 1998.
NM	Catron	Lower Little Creek	West Fork Gila River	6.0 (3.7)	Replicate of Main Diamond, est. 2000.
NM	Catron	Upper White Creek	West Fork Gila River	8.8 (5.5)	Replicate of Main Diamond, est. 2000.
NM	Sierra	South Diamond Creek ¹	East Fork Gila River	6.7 (4.2)	Relict Lineage Eliminated in 1995, re-established in 1997.
NM	Catron (Grant)	Mogollon Creek ²	Gila River	28.8 (17.9)	Replicate of South Diamond Creek, est. 1987.
NM	Catron	Spruce Creek	San Francisco River	3.7 (2.3)	Relict Lineage
NM	Catron	Big Dry Creek	San Francisco River	1.9 (1.2)	Replicate of Spruce Creek, est. 1985.
AZ	Gila	Dude Creek	Verde River	3.2 (2.0)	Replicate of Spruce Creek, est. 1999.
AZ	Greenlee	Raspberry Creek	Blue River	6.0 (3.7)	Replicate of Spruce Creek, est. 2000.
NM	Catron	Whiskey Creek	West Fork Gila River	2.6 (1.6)	Relict Lineage

¹ South Diamond Creek includes Burnt Canyon.

² Mogollon Creek includes Trail Canyon, Woodrow Canyon, Corral Canyon, and South Fork Mogollon Creek. Portions of the drainage are in Grant County, New Mexico.

Three of the four original pure population lineages are currently protected and replicated in 100 km (62 mi) of stream, each replicate is geographically separate from its original pure population, and an Emergency Plan has been developed and implemented. The Emergency Plan addresses wildfire-related impacts and discovery of non-native salmonid invasions (Service 2004). In 2002, the

Emergency Plan (Service 2004) was implemented during the Cub Fire to evacuate fish from Whiskey Creek (Brooks 2002), and in 2003 the plan was implemented during the Dry Lakes Fire to remove fish from Mogollon Creek (J. Brooks, U.S. Fish and Wildlife Service, *in litt.* 2003b).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations issued to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threaten the continued existence of

the species. A species may be reclassified, according to 50 CFR 424.11(c), if the best scientific and commercial data available substantiate that the species' status at which it is listed is no longer correct. This analysis must be based upon the five categories of threats specified in section 4(a)(1).

For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections. Our evaluation of the future threats to the Gila trout that would occur after reduction of the protections of the Act is partially based on the protection provided by the Gila and Aldo Leopold Wilderness areas, the Emergency Plan, the broodstock management plan, and limitations on take that would be determined by the States in collaboration with us.

After a thorough review of all available information and an evaluation of the five factors specified in section 4(a)(1) of the Act, we are proposing to reclassify the Gila trout as threatened, with a special rule allowing for recreational fishing, due to partial recovery. Discussion of the five listing factors and their application to recovery of the Gila trout are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

In the past, Gila trout populations were threatened by habitat degradation and watershed disturbances (52 FR 37424). These factors compounded the threats posed by non-native salmonids (see Factors C and E below for discussions on non-native salmonids). We discuss habitat degradation from livestock grazing, timber harvest, and wildfires below.

Livestock Grazing

Intensive livestock grazing has been shown to increase soil compaction, decrease infiltration rates, increase runoff, change vegetative species composition, decrease riparian vegetation, increase stream sedimentation, increase stream water temperature, decrease fish populations, and change channel form (Meehan and Platts 1978; Kaufman and Kruger 1984; Schulz and Leininger 1990; Platts 1991; Fleischner 1994; Ohmart 1996). Although direct impacts to the riparian zone and stream can be the most obvious sign of intensive livestock grazing, upland watershed condition is also important because changes in soil compaction, percent cover, and

vegetative type influence the timing and amount of water delivered to stream channels (Platts 1991). Increased soil compaction, decreased vegetative cover, and a decrease in grasslands lead to faster delivery of water to stream channels, increased peak flows, and lower summer base flow (Platts 1991; Ohmart 1996; Belsky and Blumenthal 1997). As a consequence, streams are more likely to experience flood events during monsoons (water runs off quickly instead of soaking into the ground) that negatively affect the riparian and aquatic habitats and are more likely to become intermittent or dry in September and October (groundwater recharge is less when water runs off quickly) (Platts 1991; Ohmart 1996).

Improper livestock grazing practices degrade riparian and aquatic habitats, likely resulting in decreased production of trout (Platts 1991). Livestock affect riparian vegetation directly by eating grasses, shrubs, and trees, by trampling the vegetation, and by compacting the soil. Riparian vegetation benefits streams and trout by providing insulation (cooler summer water temperatures, warmer winter water temperatures), by filtering sediments so that they do not enter the stream (sediment clogs spawning gravel and reduces the survival of salmonid eggs), by providing a source of nutrients to the stream from leaf litter (increases stream productivity), and by providing root wads, large woody debris, and small woody debris to the stream (provides cover for the fish) (Kauffman and Krueger 1984; Platts 1991; Ohmart 1996). Poor livestock grazing practices can increase sedimentation through trampling of the stream banks (loss of vegetative cover), by removal of riparian vegetation (filters sediment), and through soil compaction (decreases infiltration rates, increases runoff, causes increased erosion). Sediment is detrimental to trout because it decreases the survival of their eggs (Bjornn and Reiser 1991), and because of its negative impact on aquatic invertebrates, a food source for trout (Wiederholm 1984).

In the late 1800s and early 1900s, livestock grazing was uncontrolled and unmanaged over many of the watersheds that contain Gila trout, and much of the landscape was denuded of vegetation (Rixon 1905; Duce 1918; Leopold 1921; Leopold 1924; Ohmart 1996). Livestock grazing is more carefully managed now, which has resulted in less impact to streams occupied by Gila trout. Improved grazing management practices (e.g., fencing) have reduced livestock access to streams. Six of the 12 streams

currently occupied by Gila trout are within Forest Service grazing allotments. However, as described below, on creeks occupied by Gila trout, grazing has either been suspended or cattle are typically excluded.

Mogollon Creek is within the Rain Creek/74 Mountain Allotment. This allotment receives only winter use, and much of the riparian habitat is inaccessible to livestock. Riparian vegetation along Mogollon Creek is in good condition (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). Main Diamond Creek and the adjacent riparian zone, located in the South Fork Allotment, are excluded from grazing. The Forest Service is implementing a fencing project along Turkey Run Creek to prevent livestock trespass into Main Diamond Creek (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c).

South Diamond Creek and Black Canyon are within the Diamond Bar Allotment, where grazing was suspended in 1996. This has resulted in marked improvements in the condition of riparian and aquatic habitat in these areas (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c).

In Arizona on the Apache-Sitgreaves National Forest, Raspberry Creek, which is located in the Blue Range Primitive Area, includes two grazing allotments, Strayhorse and Raspberry. The Strayhorse Allotment includes about 75 percent of the watershed above the fish barrier. The allotment was evaluated in July 1998, and determined to be in "Proper Functioning Condition" (D. Bills, U.S. Fish and Wildlife Service, in litt. 2003d). It has a well-developed riparian plant community and no adverse impacts from ongoing livestock grazing (Service 2000). Evaluation of the Raspberry Allotment occurred twice in 1998 and concluded that the allotment was "Functional—At Risk" and in a "Downward" trend (Service 2000). The report noted an incised channel (eroded downward), and concluded that upland watershed conditions were contributing to the riparian degradation. Significant changes were made to the Raspberry Allotment in 2000 (Service 2000). Specifically, the Forest Service required a reduction in livestock numbers to 46 cattle from November 1 to June 14 (or removal of cattle prior to June 14 if utilization standards are reached). Prior to this, 225 cattle were permitted on the Allotment yearlong and 160 cattle were permitted from January 1 to May 15.

Dude Creek, on the Tonto National Forest, is within the East Verde Pasture of the Cross V Allotment. Current management techniques are designed to protect the stream banks and riparian

vegetation, thereby reducing sedimentation and increasing river insulation (and thereby maintaining cooler summer and warmer winter water temperatures).

Timber Harvest

Logging activities in the early to mid 1900s likely caused major changes in watershed characteristics and stream morphology (Chamberlin *et al.* 1991). Rixon (1905) reported the occurrence of small timber mills in numerous canyons of the upper Gila River drainage. Early logging efforts were concentrated along canyon bottoms, often with perennial streams. Tree removal along perennial streams within the historical range of Gila trout likely altered water temperature regimes, sediment loading, bank stability, and availability of large woody debris (Chamberlin *et al.* 1991). Nine of 10 populations in New Mexico exist in the Aldo Leopold Wilderness or Gila Wilderness. Of the two populations in Arizona, Raspberry Creek occurs in the Blue Range Primitive Area. Timber harvest is not allowed in wilderness or primitive areas. There are no plans for timber harvest near the other streams that have Gila trout (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). If timber harvest were to be proposed in the future, in the two areas located outside of a wilderness or primitive area, the Forest Service would need to consider the effects of the proposed action under section 7 of the Act.

Fire

High-severity wildfires, and subsequent floods and ash flows, caused the extirpation of seven populations of Gila trout since 1989: Main Diamond (1989), South Diamond (1995), Burnt Canyon (1995), Trail Canyon (1996), Woodrow Canyon (1996), Sacaton Creek (1996), Upper Little Creek (2003) (Propst *et al.* 1992; Brown *et al.* 2001; J. Brooks, Service, pers. comm. 2003). Lesser impacts were experienced in 2002 when ash flows following the Cub Fire affected the lower reach of Whiskey Creek. However, lower Whiskey Creek is frequently intermittent and typically contains few fish (Brooks 2002). Upper Whiskey Creek, where the majority of the fish occur, was not affected by the Cub Fire. The Cub Fire also impacted the upper West Fork Gila and may have eliminated non-native trout from the watershed upstream of Turkey Feather Creek (Brooks 2002). In 2003, fire retardant was dropped on Black Canyon, affecting approximately 200 m (218 yards) of stream (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e). Although some Gila trout

were killed, the number of mortalities is unknown (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e) because dead fish were carried by the current out of the area by the time fire crews arrived. However, a week after the retardant drop, live Gila trout were observed about 400 m (438 yards) below the drop site (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e).

Severe wildfires capable of extirpating or decimating fish populations are a relatively recent phenomenon, and result from the cumulative effects of historical or overly intensive grazing (can result in the removal of fine fuels needed to carry fire) and fire suppression (Madany and West 1983; Savage and Swetnam 1990; Swetnam 1990; Touchan *et al.* 1995; Swetnam and Baisan 1996; Belsky and Blumenthal 1997; Gresswell 1999), as well as the failure to use good forestry management practices to reduce fuel loads. Historic wildfires were primarily cool-burning understory fires with return intervals of 3–7 years in ponderosa pine (Swetnam and Dieterich 1985). Cooper (1960) concluded that prior to the 1950s, crown fires were extremely rare or nonexistent in the region. In 2003, over 200,000 acres burned in the Gila NF (S. Gonzales, U.S. Fish and Wildlife Service, in litt. 2004). The watersheds of Little Creek, Black Canyon, White Creek, and Mogollon Creek were affected. Because Gila trout are found primarily in isolated, small streams, avoidance of ash flows is impossible and opportunities for natural recolonization usually do not exist (Brown *et al.* 2001). Persistence of Gila trout in streams affected by fire and subsequent ash flows is problematic. In some instances, evacuation of Gila trout from streams in watersheds that have burned is necessary (Service 2004).

Effects of fire may be direct and immediate or indirect and sustained over time (Gresswell 1999). The cause of direct fire-related fish mortalities has not been clearly established (Gresswell 1999). Fatalities are most likely during intense fires in small, headwater streams with low flows (less insulation and less water for dilution). In these situations, water temperatures can become elevated or changes in pH may cause immediate death (Cushing and Olson 1963). Spencer and Hauer (1991) documented 40-fold increases in ammonium concentrations during an intense fire in Montana. Ammonia is very toxic to fish (Wetzel 1975). The inadvertent dropping of fire retardant in streams is another source of direct mortality during fires (J. Monzingo, U.S.

Forest Service, Gila National Forest, in litt. 2003e).

Indirect effects of fire include ash and debris flows, increases in water temperature, increased nutrient inputs, and sedimentation (Swanston 1991; Bozek and Young 1994; Gresswell 1999). Ash and debris flows can cause mortality months after fires occur when barren soils are eroded during monsoonal rain storms (Bozek and Young 1994; Brown *et al.* 2001). Fish suffocate when their gills are coated with fine particulate matter, they can be physically injured by rocks and debris, or they can be displaced downstream below impassable barriers into habitat occupied by non-native trout. Ash and debris flows or severe flash flooding can also decimate aquatic invertebrate populations that the fish depend on for food (Molles 1985; Rinne 1996; Lytle 2000). In larger streams, refugia are typically available where fish can withstand the short-term adverse conditions; small headwater streams are usually more confined, concentrating the force of water and debris (Pearsons *et al.* 1992; Brown *et al.* 2001).

Increases in water temperature occur when the riparian canopy is eliminated by fire and the stream is directly exposed to the sun. After fires in Yellowstone National Park, Minshall *et al.* (1997) reported that maximum water temperatures were significantly higher in headwater streams affected by fire than temperatures in reference (unburned) streams; these maximum temperatures often exceeded tolerance levels of salmonids. Warm water is stressful for salmonids and can lead to increases in disease and lowered reproductive potential (Bjornn and Reiser 1991). Salmonids need clean, loose gravel for spawning sites (Bjornn and Reiser 1991). Ash and fine particulate matter created by fire can fill the interstitial spaces between gravel particles and eliminate spawning habitat or, depending on the timing, suffocate eggs that are in the gravel. Increases in water temperature and sedimentation can also impact aquatic invertebrates, changing species composition and reducing population numbers (Minshall 1984; Wiederholm 1984; Roy *et al.* 2003), consequently affecting the food supply of trout.

As discussed above, in the “Timber” and “Grazing” sections, we have determined that the threats to Gila trout habitat from grazing and timber harvest have been greatly reduced over time. It is expected that the livestock management practices (*e.g.*, exclusion from riparian zones, reduction in numbers, suspension of grazing in some allotments) that have been implemented

will remain in place (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). Additionally, the Forest Service will continue to consider the effects of grazing on Gila trout under section 7 of the Act. Presently, 9 of the 10 streams that contain Gila trout occur in the Aldo Leopold Wilderness Area or the Gila Wilderness within the Gila National Forest, New Mexico. Timber harvest, roads, and mechanized vehicles are not allowed in wilderness areas, providing further protection to the habitat of Gila trout. Dispersed recreation does occur in wilderness areas but because of the inaccessibility of most of the streams (not near roads, hiking or backpacking is required), dispersed recreation has very little impact on the habitat. By practice, the NMDGF does not stock non-native trout within wilderness areas or above any barrier that protects a population of Gila trout. The NMDGF has not stocked non-native fish in wilderness areas for over 20 years (Mike Sloan, NMDGF, pers. comm. 2004).

High-severity forest fires remain a threat to isolated populations because natural repopulation is not possible. However, populations have been reestablished after forest fires (Main Diamond and South Diamond Creeks), there is an Emergency Plan (Service 2004) that outlines procedures to be taken in case of a high-severity forest fire, and most populations are sufficiently disjunct (e.g., separated by mountain ridges), thereby ensuring that one fire would not affect all populations simultaneously. Additionally, as discussed in this rule, fires have occurred in recent times in many areas occupied by Gila trout. Thus, the risk of fire in these areas, especially one that would affect all populations, is reduced due to an overall reduction in fuel loads. Populations may still be extirpated because of forest fires, but through management activities (rescue of fish, reestablishment of populations, hatchery management) populations can be, and have been, reestablished successfully once the habitat recovers.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

All stream reaches that contain Gila trout have been closed to sport fishing since the fish was listed in 1967. While some illegal fishing may take place, we believe that the amount of take is small. These are remote high-elevation streams located away from roads and difficult to access. NMDGF visits the recovery streams on an annual basis and has found limited evidence of illegal fishing activity (e.g., fishing tackle has been

found on a few occasions). Also, because NMDGF makes periodic visits to these streams, we believe their possible presence at unpredictable times serves as a deterrent to illegal angling activities.

The special rule (see "Description of Proposed Special Rule" section below) being proposed with this reclassification would enable NMDGF and the AGFD to promulgate special regulations allowing recreational fishing of Gila trout in specified waters, not including the four relic populations identified in Table 1 above. Any changes to the recreational fishing regulations will be made by the States with in collaboration with the Service. Management as a recreational species will be conducted similar to Apache trout, with angling in both recovery and enhancement waters. Enhancement waters are those managed solely for recreational purposes. Recreational management for Gila trout will be consistent with the goals of the recovery plan for the species (Service 2003). It is anticipated that implementation of the special rule will benefit the Gila trout by providing a means whereby excess Gila trout may be placed in waters that can provide a recreational benefit, thereby avoiding potential overcrowding in the designated recovery streams. Additionally, the special rule contributes to the conservation of the Gila trout through: (1) Eligibility for Federal sport fishing funds, (2) increase in the number of wild populations, (3) enhanced ability to monitor populations (e.g., creel censuses) for use in future management strategies, and (4) creation of goodwill and support in the local community. Each of these topics is discussed in detail in the "Description of Proposed Special Rule" section below.

A few Gila trout are removed from the wild for propagation, and some are taken for scientific or educational purposes, but the take is small and controlled through Federal and State permitting. Federal and State permitting will continue. Because of the remoteness of current and proposed recovery streams, the special regulations that will be imposed on angling, and the small amount of Gila trout collected for scientific and educational purposes, we determine that overutilization for recreational, scientific, or educational purposes is not a threat to Gila trout.

C. Disease or Predation

The carrier of bacterial kidney disease (BKD) is known to occur in trout in the upper West Fork drainage. The carrier, a bacterium (*Renibacterium salmoninarum*), occurs in very low

amounts in brown trout populations in the upper West Fork Gila River drainage and in the Whiskey Creek population of Gila trout. The bacterium was also detected in rainbow x Gila trout hybrid populations in Iron, McKenna, and White Creeks. Although the carrier bacterium is present, there were no signs of BKD in any Gila trout populations (Service 2003). Trout populations in the Mogollon Creek drainage, McKnight Creek, Sheep Corral Canyon, and Spruce Creek all tested negative for BKD.

Whirling disease (WD) was first detected in Pennsylvania, in 1956, and was transmitted here from fish brought from Europe (Thompson *et al.* 1995). *Myxobolus cerebralis* is a parasite that penetrates through the skin or digestive tract of young fish and migrates to the spinal cartilage, where it multiplies very rapidly, putting pressure on the organ of equilibrium. This causes the fish to swim erratically (whirl) and have difficulty feeding and avoiding predators. In severe infections, the disease can cause high rates of mortality in young-of-the-year fish. Water temperature, fish species and age, and dose of exposure are critical factors influencing whether infection will occur and its severity (Hedrick *et al.* 1999). Fish that survive until the cartilage hardens to bone can live a normal life span, but have skeletal deformities. Once a fish reaches 3 to 4 inches in length, cartilage forms into bone and the fish is no longer susceptible to effects from whirling disease. Fish can reproduce without passing the parasite to their offspring; however, when an infected fish dies, many thousands to millions of the parasite spores are released to the water. The spores can withstand freezing, desiccation, passage through the gut of mallard ducks, and can survive in a stream for many years (El-Matbouli and Hoffmann 1991). Eventually, the spore is ingested by its alternate host, the common aquatic worm, *Tubifex tubifex*. After about 3.5 months in the gut of the worms, the spores transform into a Triactinomyxon (TAM). The TAMs leave the worm and attach to the fish or they are ingested when the fish eats the worm. The spores are easily transported by animals, birds, and humans.

Salmonids native to the United States did not evolve with WD. Consequently, most native species have little or no natural resistance. Colorado River cutthroat trout and rainbow trout are very susceptible to the disease, with 85 percent mortality within 4 months of exposure to ambient levels of infectivity in the Colorado River (Thompson *et al.* 1999). Brown trout, native to Europe,

evolved with *M. cerebralis*, become infected but rarely suffer clinical disease. At the study site on the Colorado River, brown trout thrive, but there has been little survival beyond 1 year of age of rainbow trout since 1992 (Thompson *et al.* 1999). Gila trout are also vulnerable to WD (D. Shroufe, Arizona Game and Fish Department, in litt. 2003a).

There have been no documented cases of WD in the Gila River drainage in New Mexico or Arizona. Wild and hatchery populations of Gila trout tested have been negative for WD (Service 2003). Although WD is a potential threat to Gila trout, high infection rates would probably only occur where water temperatures are relatively warm and where *T. tubifex* is abundant. *T. tubifex* is the secondary host for the parasite; when *T. tubifex* numbers are low, the number of TAMs produced will be low, and consequently, the infection rate of Gila trout will be low. *T. tubifex* is an ubiquitous aquatic oligochaete (worm); however, it is most abundant in degraded aquatic habitats, particularly in areas with high sedimentation, warm water temperatures, and low dissolved oxygen. In clear coldwater streams (typical Gila trout habitat) it is present but seldom abundant. Infection rate is low at temperatures less than 10°C (50°F) (Thompson *et al.* 1999).

We determine that BKD is not a threat to the 4 original pure populations or the 10 replicated populations because of its limited distribution, low occurrence within the trout populations, and lack of any clinical evidence of the disease in Gila trout. Likewise, we determine that WD is not a threat to Gila trout because they are located in high-elevation headwater streams that typically have cold water and low levels of sedimentation, which limit *T. tubifex* populations and infection rates from TAMs. Although Gila trout may be susceptible to infection, there has not been a documented occurrence of WD in a wild Gila trout population. Mora National Fish Hatchery and Technology Center, where Gila trout have been held, has tested negative for WD. In addition, NMDGF and AGFD are educating the public about how to prevent the spread of WD (e.g., through educational brochures and information provided with fishing regulations).

Predation of Gila trout by brown trout has been a serious problem, and continues to be a problem for fish below stream barriers. Brown trout, a non-native salmonid, preys on Gila trout and is able to severely depress Gila trout populations. Predation threats have been addressed by chemically removing all non-native fish and reintroducing

only native species. The specific locations and timing of the potential use of chemicals in any future stream restoration projects would be made by the States in coordination with the Recovery Team. Additionally, the Gila Trout Recovery Plan provides a list of potential stream reaches that may be used for recovery purposes. Physical stream barriers, either natural waterfalls or constructed waterfalls (e.g., either composite concrete/rock or basket-type gabion) built by cooperating agencies, prevent brown trout from moving upstream and preying on Gila trout. Barrier failure is generally not considered a threat to existing Gila trout populations in New Mexico because most existing barriers are natural waterfalls. However, human-made barriers exist on lower Little Creek, McKnight Creek, and Black Canyon. Failure of human-made barriers would most likely result from catastrophic flooding and include scouring around barriers, undercutting, or complete removal. Brown trout and other non-native species downstream from these barriers remain a threat.

The threat of predation by brown trout has been reduced by eliminating brown trout from streams with Gila trout populations, and by creating barriers that prevent the upstream dispersal of brown trout into areas occupied by Gila trout. Field monitoring by the Service, Forest Service, AGFD, and the NMDGF of Gila trout provides a means to detect the introduction of brown trout into a Gila trout population, and, once detected the non-natives are removed (Service 2004). Each population is monitored at least once every 3 years. Monitoring may occur more, often depending upon the situation, such as additional surveys due to the occurrence of wildfire. Annual monitoring using electrofishing is not undertaken due to potential sampling impacts from electrofishing. The Emergency Plan provides further information on the procedures for detecting and addressing the threat of non-natives (Service 2004).

D. The Inadequacy of Existing Regulatory Mechanisms

Before the Gila trout was federally listed as endangered (1967), the species had no legal protection. Upon being listed under the Act, the Gila trout immediately benefited from a Federal regulatory framework that provided protection and enhancement of the populations in three ways. First, take was prohibited. Take is defined under the Act to include killing, harassing, harming, capturing, or collecting individuals or attempting to do any of

these things. Habitat destruction or degradation is also prohibited if such activities harm individuals of the species. Second, section 7 of the Act requires that Federal agencies consult with the Service to ensure that their actions will not likely jeopardize the continued existence of the species. Third, once a species is listed, the Service is required to complete a recovery plan and make timely revisions, if needed. Thus, listing the species provided recognition, protection, and prohibitions against certain practices (such as take), facilitated habitat protection, and stimulated recovery actions.

Subsequent to the Federal listing action, the States of New Mexico and Arizona officially recognized the declining status of the species. Arizona designated the Gila trout as an endangered species in 1988, which includes species that are known or suspected to have been extirpated from Arizona but that still exist elsewhere. New Mexico designated the Gila trout as an endangered species (Group 1) on January 24, 1975 (NM State Game Commission Regulation No. 663) under authority of the Wildlife Conservation Act. Group 1 species are those whose prospects of survival or recruitment in New Mexico are in jeopardy. The designation provides the protection of the New Mexico Wildlife Conservation Act (Sections 17–2–37 through 17–2–18 NMSA 1978) and prohibits taking of such species except under a scientific collecting permit. New Mexico also has a limited ability to protect the species' habitat through the Habitat Protection Act (Sections 17–3–1 through 17–3–11) through water pollution legislation, and tangentially through a provision that makes it illegal to dewater areas used by game fish (Section 17–1–14). Take of Gila trout in Arizona is prohibited through State statute (Arizona Revised Statute Title 17) and Commission Order (Commission Order 40). We do not expect any changes in the current State protections provided to the Gila trout as a result of this rule. However, if our proposed special rule is finalized, the States of Arizona and New Mexico will likely be adopting regulations to allow for recreational fishing as described in the "Description of the Proposed Special Rule" section below.

We determine that because of the protection that would be provided from Federal listing as a threatened species, along with this proposed special rule, State regulatory protection, and habitat protection provided by the National Forests, there are adequate regulatory mechanisms to protect and enhance Gila trout populations and their habitat.

Many of these protective regulations, conservation measures, and recovery actions have substantially improved the status of the Gila trout.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

When the Gila trout was listed as endangered, the most important reason for the species' decline was hybridization and competition with and/or predation by non-native salmonids (52 FR 37424). Uncontrolled angling depleted some populations of Gila trout, which in turn encouraged stocking of hatchery-raised, non-native species (Miller 1950; Propst 1994). Due to declining native fish populations, the NMDGF propagated and stocked Gila trout, rainbow trout, cutthroat trout, and brown trout during the early 1900s to improve angler success. Gila trout were propagated from 1923 to 1935, at the Jenks Cabin Hatchery in the Gila Wilderness, but the program was abandoned because of the hatchery's poor accessibility and low productivity (Service 1984). After early stocking programs were discontinued, the non-native trout species persisted and seriously threatened the genetic purity and survival of the few remaining populations of Gila trout. Recent efforts to recover the species have included eliminating non-native salmonids from the species historic habitat through piscicide (fish-killing), mechanical removal, and construction of waterfall barriers to prevent their reinvasion. Currently, 12 viable populations of Gila trout exist in the absence of non-native salmonids.

We have determined that the threats posed by non-native fish are reduced because non-native trout are not present in the streams with original pure or replicated populations of Gila trout. Barriers are present to prevent non-native trout from dispersing into areas occupied by pure Gila trout populations. Drought, wildfire, and floods remain as threats. However, conditions are monitored and fish can be rescued from streams threatened by drying, fires, floods, or barrier failure, if necessary (Service 2004). As explained in the Emergency Plan, these remote areas may be accessed through helicopter or use of horses and mules, depending upon the urgency of the situation. Flooding that occurs in an undisturbed watershed is not considered a threat to Gila trout. However, flooding that occurs after a severe fire is a threat. Service personnel monitor fires and the potential for flooding, and rescue fish from streams that are in danger of flash floods (Service 2004). Rescued fish may be

used in broodstock development, may be introduced into other suitable streams, or they can be placed back into their stream of origin once the habitat conditions are suitable. However, it may take many years for the habitat to recover to the point that it is suitable for trout again.

Summary

We believe that reclassifying the Gila trout from endangered to threatened status with a special rule is consistent with the Act, and that the special rule will further the conservation and recovery of this species. See the "Description of the Proposed Special Rule" section below for an explanation of the conservation benefits of the proposed special rule. Threatened status is appropriate because the number of populations has increased from 4 to 12 since recovery efforts began and the threats affecting the species have been reduced or eliminated. Additionally, as noted above, the wild populations of Gila trout were estimated to be fewer than 10,000 fish greater than age 1 in 1992. In 2001, almost 10 years later, the population in New Mexico had increased significantly and was estimated to be 37,000 fish (Brown *et al.* 2001). Three of the four original pure population lines are protected and replicated in 100 km (62 mi) of stream, each replicate is geographically separate from its remnant population, and an Emergency Plan was developed and has been implemented in 2002 and 2003 (Service 2004), and will continue to be implemented as necessary. A copy of the Emergency Plan is available by contacting the New Mexico Fishery Resources Office (*see ADDRESSES* section). We have determined that the Gila trout is no longer in danger of extinction throughout all or a significant portion of its range and therefore no longer meets the definition of endangered.

Threatened status is appropriate for the Gila trout because although the major threats have been reduced by recovery efforts and its status has improved, threats to the species still exist. Non-native salmonids, which were the major threat to the species, are not in the streams that currently support Gila trout. We will continue to work with the States to manage non-native salmonids. Current State and Federal regulations prohibit the take of Gila trout and few Gila trout are taken for scientific or educational purposes, in accordance with State and Federal permits under section 10(a)(1)(A) of the Act. State and Federal regulations governing take will continue after downlisting because the special rule

will prohibit take, except for take related to recreational fishing activities in accordance with State law. Threats due to natural disasters remain, but are mitigated by the Emergency Plan that addresses wildfire- and drought-related impacts and discovery of non-native salmonid invasions (Service 2004) (*see* "Recovery Plans and Accomplishments" section for a discussion of past successes). Therefore, we believe that given continued careful management, reclassification to a threatened status is appropriate.

Description of the Proposed Special Rule

Through a special rule that amends our regulations at 50 CFR 17.44, we are proposing that some forms of recreational fishing be exempted from the prohibitions against take of Gila trout. Under current regulations regarding endangered species, angling for Gila trout is not allowed. Our proposed special rule replaces the Act's general prohibitions against take of Gila trout. Those prohibitions (under section 9 of the Act) make it illegal to import, export, take, possess, deliver, receive, carry, transport, ship in interstate commerce, or sell such species. The term take, defined in section 3 of the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, section 4(d) of the Act provides that we may issue a special rule when a species is listed as threatened. In that case, the general prohibitions in 50 CFR 17.31 for threatened species do not apply to that species, and the special rule contains all the prohibitions and exceptions that do apply. Typically, such special rules incorporate all the prohibitions contained in 50 CFR 17.31, with additional exceptions for certain forms of take that we have determined are not necessary to prohibit.

In 1978, we finalized regulations applying most of the take prohibition provisions to threatened wildlife (50 CFR 17.31). These procedures were established on April 28, 1978 (43 FR 18181), and amended on May 31, 1979 (44 FR 31580). This proposed rule, if made final, would change the status of the Gila trout from endangered to threatened. Reclassifying the species will have no effect on the regulations regarding protection and recovery of Gila trout, except for take related to recreational fishing as provided in the proposed special rule. However, the special rule included in this proposal would enable the States of Arizona and New Mexico to promulgate special regulations allowing recreational fishing

for Gila trout, beginning on the effective date of the final reclassification rule.

This proposed special rule will apply to Gila trout found in New Mexico and Arizona. The proposed special rule would allow recreational fishing of Gila trout in specified waters, not including the four relict populations identified in Table 1 above. As noted elsewhere, changes to the recreational fishing regulations will be made by the States in collaboration with the Service. Management as a recreational species will be conducted similar to Apache trout and consistent with the goals of the recovery plan for the species (Service 2003). For the reasons explained in this proposal, it is no longer necessary or advisable for the conservation of the Gila trout to prohibit take through regulated fishing. In general, establishment of recreational opportunities can be developed in recovery waters that have stable or increasing numbers of individuals (as measured by population surveys) and where habitat conditions are of sufficient quality to support viable populations of Gila trout (populations having annual recruitment, size structure indicating multiple ages, and individuals attaining sufficient sizes to indicate 3 to 7 years' survival). In addition, recreational opportunities may be developed in non-recovery or enhancement waters. The principal effect of the special rule is to allow take in accordance with fishing regulations enacted by New Mexico and Arizona. We will collaborate with the States to develop fishing regulations that are adequate to protect and conserve Gila trout. We anticipate New Mexico and Arizona will institute special regulations in certain waters that allow recreational fishing of Gila trout.

This proposed rule, even when made final, is not an irreversible action on our part. Reclassifying the Gila trout back to endangered status is possible and may be done through an emergency rule if a significant risk to the well-being of the Gila trout is determined to exist, or through a proposed rule should changes occur that alter the species' status or significantly increase the threats to its survival. Because changes in status or increases in threats (e.g., wildland fire effects, non-native salmonid invasion, barrier failure, drought) might occur in a number of ways, criteria that would trigger another reclassification proposal cannot be specified at this time.

The proposed 4(d) special rule for recreational fishing is based on the best available science. We anticipate that over time, as a result of additional studies and as the analyses of monitoring data become available, some

changes in these regulations may be required (e.g., closure of areas previously permitted for fishing, or opening of new areas). Changes to the recreational fishing regulations will be made by the States in collaboration with the Service. Management as a recreational species will be consistent with the goals of the recovery plan for the species (Service 2003). These changes could result in an increase or decrease in restrictions on recreational fishing as determined in collaboration with State and Service personnel.

Conservation of the Gila Trout

As noted above, a special rule for a threatened species shall be issued by the Secretary when it is deemed necessary and advisable to provide for the "conservation" of the species. The term conservation, as defined in section 3(3) of the Act, means to use and the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, these methods and procedures may include regulated taking. Based on the definition of conservation in the section 3(3) of the Act, recreational fishing may be authorized pursuant to a 4(d) rule in order to relieve population pressures.

We currently have active production of Gila trout at the Mora National Fish Hatchery and Technology Center. Within the near future, recovery augmentation and broodstock management needs for these two lineages will likely require the production of up to 20,000 fish. Ensuring the genetic diversity of these 20,000 fish through implementation of the broodstock management plan will result in the simultaneous production of about 100,000 fish that are excess to the recovery needs of the Gila trout. Excess Gila trout are produced as a result of the specific controlled propagation techniques required to ensure the genetic quality of the Gila trout needed for recovery. Currently, hatchery-reared and rescued Gila trout are stocked only in streams designated for recovery that are closed to angling. If the excess Gila trout were to be stocked into the designated recovery streams, this would create population pressures due to

overcrowding. The streams designated for recovery are small, high-elevation streams, which do not support great numbers of fish (i.e., they have a low carrying capacity). While the numbers of Gila trout stocked into recovery streams would vary each year, depending on circumstances such as wildfire, we expect that the number of Gila trout produced would greatly exceed the carrying capacity of the recovery streams. We believe that placing excess Gila trout in streams (e.g., lower West Fork Gila River downstream of the falls near White Creek confluence, and throughout the Middle Fork Gila River) and lakes (e.g., Bill Evans Lake, Lake Roberts, Snow Lake) that are currently not identified for use as part of the long-term Gila trout recovery strategy would avoid any potential overcrowding in the designated recovery streams. Without a 4(d) rule in place that allows for recreational fishing, Gila trout could not be stocked in nonrecovery streams that are open to angling due to the take prohibitions of the Act that apply to endangered and threatened species. As proposed, the 4(d) rule for Gila trout would avoid overcrowding in the designated recovery streams by allowing excess Gila trout to be placed in streams open to angling. If excess Gila trout are not used for stocking in nonrecovery streams, we would be required to euthanize all genetically pure excess Gila trout because of limited space and resources to maintain them at the hatchery. Below we provide additional reasons as to how the proposed 4(d) rule provides for the conservation of the Gila trout beyond that of relieving potential population pressures due to overcrowding. Specifically, this proposed special 4(d) rule contributes to the conservation of the Gila trout through: (1) Determining eligibility for Federal sport fishing funds, (2) causing increase in the number of wild populations, (3) enhancing the ability to monitor populations, and (4) creating goodwill and support in the local community. Each of these topics is discussed in detail below.

Expansion of the Population

There are several benefits to stocking fish in streams and lakes. First, having Gila trout in additional stream miles and lakes will increase the overall security of the species. If Gila trout are introduced into larger, higher order streams that are less subject to catastrophic events and where refugia are more abundant, these fish are likely to persist even if a large-scale disturbance such as fire were to occur. It is probable that some Gila x rainbow

trout hybrids would be produced and that Gila trout might also be lost to predation by brown trout. However, it is expected that some pure Gila trout would persist since brown trout far outnumber rainbow trout in nonrecovery streams and the chance for hybridization would be minimal. Second, areas directly below existing barriers could also be targeted for stocking. These reaches of stream would then act as "buffers" between the pure populations and populations of Gila trout mixed with non-native trout. Through repeated stocking, the proportion of non-native trout would decline and decrease the likelihood that non-natives would pass the barrier, either by human transport or natural dispersal.

Finally, if Gila trout were stocked in additional waters, the angling public would be exposed to, and become more familiar with, Gila trout and their natural beauty and value as a sport fish. Having public support of recovery is essential to the success of the program. As noted above, there are several lakes (e.g., Bill Evans Lake, Lake Roberts, Snow Lake) and stream segments (e.g., lower West Fork Gila River downstream of the falls near White Creek confluence, and throughout the Middle Fork Gila River) that are not currently identified in long-term recovery strategies and that could provide quality angling opportunities for Gila trout. Within Arizona, Verde River, Oak Creek, Wet Beaver Creek, and West Clear Creek have potential for developing angling opportunities for Gila trout. Reservoirs include Watson, Willow, Mingus, and Deadhorse.

Eligibility for Funds

Once streams and lakes occupied by Gila trout are opened to angling, the trout can be designated as a "sport fish" and the amount of funds available to Gila trout restoration projects would increase tremendously. For example, as a sport fish the Gila trout would be eligible for funding through the Sport Fish Restoration Program (SFRP) for management activities, including hatchery production associated with the gila trout. In fiscal year 2004 NMDGF received \$3,258,275 and AGFD received \$3,556,597 through the SFRP. The specific amount that would be spent on the Gila trout using these funds would depend on the priorities of the NMDGF and the AGFD; however, as a sport fish the States would have this additional funding source available for restoration projects (P. Mullane, U.S. Fish and Wildlife Service, in litt. 2005). In contrast, the amount of Service money

spent on Gila trout in 2004 is estimated at \$137,500.

In Arizona, approximately \$2.1 million (including matching dollars) are available to sport fishing projects (L. Riley, ADGF, pers.comm. 2004). In addition, about \$1.7 million are available for the culture (hatchery production) of sport fish (L. Riley, ADGF, pers. comm. 2004). With increased hatchery production and establishment of new populations in additional waters, recovery goals could be reached sooner and more angling opportunities could be provided to the public. With an increase in the amount of money available for non-native trout removal, barrier construction, habitat restoration, and hatchery production, recovery and delisting of the Gila trout could be enhanced.

Monitoring and Education

Monitoring and education are critical to the successful conservation of the Gila trout. We intend to work closely with the States of New Mexico and Arizona to develop evaluation and assessment programs to gather population data (e.g., size of fish caught, number caught and released), survival of released fish, and angler-related data (e.g., time spent fishing, streams fished, catch rate, hooking, and handling mortality) on streams and lakes. Our ability to evaluate these data is essential to the development of management strategies that ensure the long-term conservation of Gila trout. Using a population viability model that examined mortality from various sources, Brown *et al.* (2001) found that up to 15 percent angling mortality of adult Gila trout per year had no effect on population viability. Although models never perfectly incorporate the complexity of natural systems and are only an approximation based on many assumptions (Schamberger and O'Neil 1986), they are useful tools that can be used by managers to improve recovery strategies. With information gathered from streams and lakes open to angling, the impact of angling on population dynamics could be tested directly, leading to better management of the populations, especially as the species moves closer to recovery.

We also intend to work with the States to develop education programs and materials on proper handling and release of Gila trout to reduce hooking and handling mortality in catch-and-release areas, and on species identification for educational purposes. Educating the public on the uniqueness of the Gila trout, its limited distributional range, and its value as one of New Mexico's and Arizona's few

native trout is expected to build support for the conservation of the species.

Goodwill

As mentioned above, community support is essential to the recovery of Gila trout. Some members of the public have opposed Gila trout recovery efforts because of the loss of angling opportunities for non-native trout through the renovation of streams (Brooks *et al.* 2000; Blue Earth Ecological Consultants 2001). As stated earlier, we believe that adequate regulatory mechanisms are in place; however, illegal angling has occurred in streams officially closed to angling (NMDGF 1997a, b), and unauthorized stocking of non-native salmonids into streams either currently occupied by Gila trout or proposed for reintroductions have been documented in recent years (NMDGF 1998; Brooks *et al.* 2000). It is likely that because Gila trout evolved and are adapted to this ecosystem, they will produce more stable populations and a more dependable fishery than non-native trout (Turner 1986). There is also a demonstrated high public interest in the future angling opportunities for Gila trout (NMDGF 1997a, b). Therefore, we believe that the availability of recreational fishing for Gila trout will increase public support for the conservation and recovery of the species (NMDGF 1997a).

In the 1996 Policy for Conserving Listed or Proposed Species under the Endangered Species Act While Providing for and Enhancing Recreational Fisheries Opportunities (61 FR 27978), we note that fishery resources and aquatic ecosystems are integral components of our heritage and play an important role in the Nation's social, cultural, and economic well being. Accordingly, we are aggressively working to promote compatibility and reduce conflict between administration of the Act and recreational fisheries (Executive Order 12962). Carefully regulated recreational fishing is not likely to impact Gila trout populations, and can promote awareness and conservation of the species by maintaining public support for conservation.

In conclusion, Gila trout will continue to be protected under the Act, but reclassification from endangered to threatened with a special 4(d) rule would allow recreational fishing opportunities to be developed in recovery and enhancement waters, and avoid potential overcrowding in the designated recovery streams by allowing excess Gila trout to be placed in waters open to angling. Additionally, the 4(d)

rule would provide New Mexico and Arizona greater flexibility in the management of Gila trout, it will increase the amount of funding available for population expansion and habitat restoration, it will allow for the expansion and greater security of populations, it will enhance our ability to monitor and manage populations, and it will increase the public's knowledge and appreciation of this native trout. On the basis of our experience with Gila trout recovery, we expect an increase in public acceptance and greater opportunity for us to work with local agencies and the public to find innovative solutions to potential conflicts between endangered species' conservation and humans. We believe this special rule is consistent with the conservation of the species and that it will speed recovery of the Gila trout. Therefore, this special rule is necessary and advisable to provide for the conservation of the Gila trout.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, and groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed and implemented for the conservation of the species, unless a finding is made that such a plan will not promote the conservation of the species. Most of these measures have already been successfully applied to Gila trout.

Under this proposed rule, the protections of the Act will continue to apply to the Gila trout. This proposed rule would change the classification of the Gila trout from endangered to threatened, and allow New Mexico and Arizona to promulgate special regulations allowing recreational fishing of Gila trout. The protection required of Federal agencies and the prohibitions against taking and harm are discussed in the *Summary of Factors Affecting the Species* section, Factor D, the inadequacy of existing regulatory mechanisms.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are

codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If a Federal action is likely to jeopardize a species proposed to be listed as threatened or endangered or destroy or adversely modify proposed critical habitat, the responsible Federal agency must confer with us.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) In accordance with section 9(b)(1) of the Act, the possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of specimens of this taxon that were collected prior to the listing of this species (December 28, 1973);

(2) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, recreational trail or forest road development or use, road construction, prescribed burns, timber harvest, or piscicide application (fish-killing agent), when such activities are conducted in accordance with a biological opinion from us on a proposed Federal action;

(3) Activities that may result in take of Gila trout when the action is conducted in accordance with a valid permit issued by us pursuant to section 10 of the Act;

(4) Recreational activities such as sightseeing, hiking, camping, and hunting in the vicinity of Gila trout populations that do not destroy or significantly degrade Gila trout habitat as further defined in the FS and State management strategies for the occupied areas; and

(5) Angling activities in accordance with authorized fishing regulations for Gila trout in New Mexico and Arizona.

We believe that the following actions involving Gila trout could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Take of Gila trout without a valid permit or other incidental take authorization issued by us pursuant to section 10 of the Act. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken Gila trout;

(3) Use of piscicides, pesticides, or herbicides that are not in accordance with a biological opinion issued by us pursuant to section 7 of the Act, or a valid permit or other incidental take authorization issued by us pursuant to section 10 of the Act;

(4) Intentional introduction of non-native fish species (e.g., rainbow and brown trout) that compete or hybridize with or prey upon Gila trout;

(5) Destruction or alteration of Gila trout habitat that results in the destruction or significant degradation of cover, channel stability, substrate composition, increased turbidity, or temperature that results in death of or injury to any life history stage of Gila trout through impairment of the species' essential breeding, foraging, sheltering, or other essential life functions; and

(6) Destruction or alteration of riparian and adjoining uplands of waters supporting Gila trout by timber harvest, fire, poor livestock grazing practices, road development or maintenance, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, increased turbidity, or temperature that results in death of or injury to any life history stage of Gila trout through impairment of the species' essential breeding, foraging, sheltering, or other essential life functions.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Requests for copies of the regulations concerning listed wildlife or inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, P.O. Box 1306, Albuquerque, New Mexico 87103

(telephone 505/248-6649; facsimile 505/248-6922).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (e.g., grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by Federal law. In some circumstances, we may withhold from the rulemaking record a respondent's identity, as allowable by Federal law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed reclassification and special rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We

will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed actions.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposed rule.

Public Hearing

The Act provides for one or more public hearings on this proposed rule, if requested. Given the likelihood of a request, we plan to schedule two public hearings. We will hold one public hearing in Phoenix, Arizona on June 28, 2005 and one in Silver City, New Mexico on June 29, 2005.

Announcements for the public hearings will be made in local newspapers.

Public hearings are designed to gather relevant information that the public may have that we should consider in our rulemaking. During the hearings, we will present information about the proposed action. We invite the public to submit information and comments at the hearings or in writing during the open public comment period. We encourage persons wishing to comment at the hearings to provide a written copy of their statement at the start of the hearings. This notice and public hearings will allow all interested parties to submit comments on the proposed reclassification and special rule. We are seeking comments from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal. Persons may send written comments to the New Mexico Ecological Services Field Office (see **ADDRESSES** section) at any time during the open comment period. We will give equal consideration to oral and written comments.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. This rule will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule making in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4 of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Section 7 Consultation

We do not need to complete a consultation under section 7 of the Act for this rule making. The actions of listing, delisting, or reclassifying species under the Act are not subject to the requirements of section 7 of the Act. An intra-Service consultation is completed prior to the implementation of recovery or permitting actions for listed species.

Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997); the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we understand that we must conduct relations with recognized Federal Indian Pueblos and Tribes on a Government-to-Government basis. Therefore, we will solicit information from the Indian Pueblos and Tribes during the comment period. We will meet with any affected Indian Pueblos and Tribes to discuss potential effects on them or on their resources that may result from the reclassification of Gila trout and the special rule.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the New Mexico Ecological Services Field Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title

50 of the Code of Federal Regulations as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entries in the Status and Special Rule columns of the entry for “Trout, Gila” under “FISHES” in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *	* * * * *	* * * * *	* * * * *				
FISHES							
* * * * *	* * * * *	* * * * *	* * * * *				
Trout, Gila	<i>Oncorhynchus</i> (=Salmo) <i>gilae</i>	U.S.A. (AZ, NM)	entire	T	1, _	N/A	17.44(z)
* * * * *	* * * * *	* * * * *	* * * * *				

3. Add the following paragraph (z) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(z) Gila trout (*Oncorhynchus gilae*).

(1) Except as noted in paragraph (z)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the Gila trout.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable fish and conservation laws and regulations

promulgated by the States of New Mexico or Arizona.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense listed in this special rule.

(2) In the following instances you may take this species in accordance with applicable fish and wildlife conservation laws and regulations in New Mexico or Arizona, as constituted in all respects relevant to protection of Gila trout:

(i) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other

conservation purposes consistent with the Endangered Species Act;

(ii) Fishing activities authorized under New Mexico or Arizona laws and regulations; and

(3) Any violation of applicable fish and wildlife conservation laws or regulations in New Mexico or Arizona with respect to the taking of this species is also a violation of the Act.

Dated: April 25, 2005.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–9121 Filed 5–10–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 90

Wednesday, May 11, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with Office of Management and Budget (OMB) regulations (5 CFR 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval for the revision of a currently approved information collection for the Expanded Food and Nutrition Education Program (EFNEP).

DATES: Written comments on this notice must be received by July 11, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods to Jason Hitchcock, eGovernment Program Leader, Information Systems and Technology Management; Mail: CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250-2216; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Washington, DC 20024; Fax: 202-720-0857; or E-mail: jhitchcock@csrees.usda.gov.

FOR FURTHER INFORMATION CONTACT: For further information and to request a copy of the information collection, call or write Jason Hitchcock, E-Government Leader, (202) 720-4343.

SUPPLEMENTARY INFORMATION:

Title: 0524-0044.

OMB Number: 0524-0044.

Expiration Date of Current Approval: September 30, 2005.

Type of Request: Intent to seek approval for the revision of a currently approved information collection for three years.

Abstract: The USDA's CSREES Expanded Food and Nutrition Education Program (EFNEP) is a unique program that began in 1969 and is designed to reach limited resource audiences, especially youth and families with young children. Extension professionals train and supervise paraprofessionals and volunteers who teach food and nutrition information and skills to limited resources families and youth. EFNEP operates in all 50 states and in American Samoa, Guam, Micronesia, Northern Marianas, Puerto Rico, and the Virgin Islands.

The objectives of EFNEP are to assist limited resource families and youth in acquiring the knowledge, skills, attitudes, and changed behaviors necessary for nutritionally sound diets, and to contribute to their personal development and the improvement of the total family diet and nutritional well-being.

Since program inception, states have annually reported demographic and dietary behavior change of their EFNEP audience to the Federal Cooperative Extension Service EFNEP National Program Leader at CSREES. Through 1992, the reports were submitted on OMB approved forms, ES 255 and ES 256. The data gathered using these forms were of limited usefulness at the State and local level, and data quality was questionable.

The Evaluation/Reporting System (E/RS) was developed to capture the impacts of EFNEP. The purpose of this collection is to gauge if the federal assistance provided is having an impact on the target audience and enable CSREES staff to make programmatic improvements in its delivery of federal assistance. The data collected through E/RS also provides information for management purposes, provides diagnostic assessments of participant needs, and exports summary data for State and National assessment of the program's impact. The specifications for this system were developed by a committee of representatives from across the United States. E/RS is a

database that stores information in the form of records about the program participants, their family structure and their dietary practices. The system is structured to collect data about adult participants, youth and youth group members, staff assignments, and hours worked. The E/RS consists of separate software sub-systems for the county, State, and Federal levels. Each county-level system accumulates data about individuals. This data is exported electronically to the State-level system. At the State level, participating university staff import the data and create State reports that are exported electronically to the Federal-level system. At the Federal level, the State compiled data lacks any personal information that may identify any of the participants. National reports are then created and made available to the public.

Revisions to the currently approved collection include complying with Federal regulations and standards for maintaining, collecting and presenting data on race and ethnicity. The system has also added an improved youth evaluation component. The dietary analysis component has been expanded to provide more foods and nutrients, and the system provides more output options. This provides expanded flexibility for State and local reports.

The evaluation processes of EFNEP remain consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103-62), the Federal Activities Inventory Reform Act (FAIR) (Pub. L. 105-207), and the Agricultural, Research, Extension and Education Reform Act (AREERA) of 1998 (Pub. L. 105-185), together with OMB requirements, support the reporting requirements requested in this information collection. One of the five Presidential Management Agenda initiatives, Budget and Performance Integration, builds on GPRA and earlier efforts to identify program goals and performance measures, and link them to the budget process. The FAIR act requires the development and implementation of a system to monitor and evaluate agricultural research and extension activities in order to measure the impact and effectiveness of research, extension, and education programs. AREERA requires a performance

evaluation to be conducted to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multistate significance.

Estimate of Burden: Each year the state offices aggregate local electronic data into the State report, and transmit it electronically to CSREES. This requirement constitutes the federal burden CSREES imposes on the States and is the only burden measured and accounted for in this estimate. CSREES estimates that it takes one State or Territory 12 minutes to aggregate the local level information and export the summary information to CSREES. There are a total of 56 responses annually, thus constituting a total annual estimated burden of 11.2 hours for this information collection. The burden is small relative to the amount of information collected, because CSREES collects this information electronically and leverages information that State and local programs are currently collecting for the evaluation of their own activities.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done in Washington, DC, this 3rd day of May, 2005.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 05-9345 Filed 5-10-05; 8:45 am]

BILLING CODE 3410-22-M

ARCTIC RESEARCH COMMISSION

Notice of Meeting

May 5, 2005.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 76th meeting in Anchorage, AK on June 9-10, 2005. The Business Session open to the public will convene at 9 a.m. Thursday, June 9. The Agenda items include:

- (1) Call to order and approval of the agenda.
- (2) Approval of the Minutes of the 75th Meeting.
- (3) Reports from Congressional Liaisons.
- (4) Agency Report.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Friday, June 10, 2005. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, US Arctic Research Commission, (703) 525-0111 or TDD 703-306-0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 05-9354 Filed 5-10-05; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Docket 18-2005

Foreign-Trade Zone 183—Austin, Texas; Application For Subzone, Samsung Austin Semiconductor, LP; (Semiconductor Memory Devices); Austin, Texas

Correction

The **Federal Register** notice (70 FR 23843-23844, 5/5/2005) describing the application by the Foreign-Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting special-purpose subzone status with export-only manufacturing authority (semiconductor memory devices) for the facilities of Samsung Austin Semiconductor, LP, located in Austin, Texas, is corrected as follows:

In Paragraph 2, the description of Site # 3 should read "Three Way Inc. facilities (1.9 acres; 50,000 sq. ft.) located at 8410A Tuscany Way Building in Austin."

Dated: May 5, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05-9413 Filed 5-10-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include discussion of trade priorities and initiatives, PEC subcommittee activity and proposed letters of recommendation. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13316.

DATES: May 25, 2005.

Time: 10 a.m. to 11:45 a.m. (e.d.t.).

ADDRESSES: Location to be determined. This program will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than May 16, 2005, to J. Marc Chittum, President's Export Council, Room 4043, Washington, DC 20230 (Telephone: (202) 482-1124). Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 4043, Washington, DC 20230 (Phone: (202) 482-1124), or visit the PEC Web site, <http://www.ita.doc.gov/td/pec>.

Dated: May 6, 2005.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 05-9471 Filed 5-9-05; 12:24 pm]

BILLING CODE 3510-DR-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designation under the Textile and Apparel Commercial Availability Provision of the African Growth and Opportunity Act (AGOA), the Andean Trade Promotion and Drug Eradication Act (ATPDEA), and the U.S. - Caribbean Basin Trade Partnership Act (CBTPA)

May 5, 2005.

AGENCY: The Committee for the
Implementation of Textile Agreements
(CITA)

ACTION: Designation.

EFFECTIVE DATE: May 11, 2005.

SUMMARY: CITA has determined that certain ring spun single yarns of English yarn number 30 and higher of 0.9 denier or finer micro modal fibers, classified in subheading 5510.11.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in women's and girls' knit apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA, and the CBTPA. CITA hereby designates such apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing such yarns as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States. CITA also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in women's and girls' knit apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns; such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States. CITA notes that this designation under the ATPDEA renders women's and girls' knit apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country containing such yarn as eligible for quota-free and duty-free treatment under HTSUS subheading 9821.11.13,

provided the requirements of that subheading are met.

FOR FURTHER INFORMATION CONTACT:
Janet Heinzen, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 482 3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The commercial availability provisions of the AGOA, the ATPDEA, and the CBTPA provide for duty free and quota free treatment for apparel articles that are both cut (or knit to shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamations 7350 and 7351 of October 4, 2000 and Presidential Proclamation 7616 of October 31, 2002, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002, CITA was authorized to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA.

On December 27, 2004, CITA received a request alleging that certain ring spun single yarns of English yarn number 30 and higher of 0.9 denier or finer micro modal fibers, described above, for use in women's and girls' knit apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA and the CBTPA. It requested that such apparel articles containing such yarns be eligible for preferential treatment under the AGOA, the

ATPDEA, and the CBTPA. On January 3, 2005, CITA requested public comment on the petition. See Request for Public Comments on Commercial Availability Petition under the African Growth and Opportunity Act (AGOA), the United States - Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), 70 FR 80 (January 3, 2005). On January 19, 2005, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On January 19, 2005, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On February 7, 2005, the U.S. International Trade Commission provided advice on the request.

Based on the information and advice received and its understanding of the industry, CITA determined that the yarn set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On February 25, 2005, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA, the ATPDEA, and the CBTPA.

CITA hereby designates women's and girls' knit apparel articles that are both cut and sewn or otherwise assembled in one or more eligible beneficiary sub Saharan African country or in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing ring spun single yarns of English yarn number 30 and higher of 0.9 denier or finer micro modal fibers, classified in HTSUS subheading 5510.11.0000, as eligible to enter free of quotas and duties under HTSUS subheading 9819.11.24 or 9820.11.27, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112(d) of the AGOA and section 211 (vii) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible AGOA or CBTPA beneficiary country.

CITA also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in women's and girls' knit apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns. Such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 204(b)(3)(B)(vi) of the ATPDEA, and that such articles are imported directly into the customs territory of the United States from an eligible ATPDEA beneficiary country.

An "eligible beneficiary sub Saharan African country" means a country which the President has designated as a beneficiary sub Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722), resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTSUS.

An "eligible ATPDEA beneficiary country" means a country which the President has designated as an ATPDEA beneficiary country under section 203(a)(1) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3202(a)(1)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 203(c) and (d) of the ATPA (19 U.S.C. 3202(c) and (d)), resulting in the enumeration of such country in U.S. note 1 to subchapter XXI of Chapter 98 of the HTSUS.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the Caribbean Basin Recovery Act (CBERA) (19 U.S.C. 2703(b)(5)(B)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)), resulting in the enumeration of such country in U.S.

note 1 to subchapter XX of Chapter 98 of the HTSUS.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05-9412 Filed 5-10-05; 8:45 am]

BILLING CODE 3510-DS-S

COMMODITY FUTURES TRADING COMMISSION

Amendment of Interpretation

SUMMARY: Section 4d(a)(2) of the Commodity Exchange Act ("CEA") and related Commission regulations (hereinafter collectively referred to as "segregation requirements") require that all funds received by a futures commission merchant ("FCM") from a customer to margin, guarantee, or secure futures or commodity options transactions and all accruals thereon be accounted for separately, and not be commingled with the FCM's own funds or used to margin the trades of or to extend credit to any other person.¹ Further, Section 4d(a)(2) has been construed to require that customer funds, when deposited with any bank, trust company, clearing organization or another FCM, be available to the FCM carrying the customer account upon demand.²

In Financial and Segregation Interpretation No. 10, the Division of Trading and Markets (predecessor to the Division of Clearing and Intermediary Oversight ("Division")) first addressed the issue of whether customer funds may be deposited at a bank in a safekeeping or custodial account (otherwise known as "safekeeping account" or "third-party custodial account"), in lieu of posting such funds directly with an FCM, without being deemed to violate the segregation requirements.³ Because Section 17(f) of the Investment Company Act of 1940,⁴ at the time, was interpreted by Securities and Exchange Commission ("SEC") staff to generally bar registered investment companies ("RICs") from using FCMs and futures clearinghouses as custodians of fund assets, it was decided that the use of third-party

custodial accounts should not be banned altogether and that Section 4d(a)(2) should be interpreted to permit customer funds to be held in such accounts, subject to standards designed to ensure the carrying FCM's right of immediate access to customer funds. Since the issuance of Interpretation No. 10, a change in the law governing the custody of fund assets now allows RICs, with a limited exception, to post customer funds with an FCM.⁵ Because it is no longer necessary for most RICs to use third-party custodial accounts to engage in futures transactions, coupled with evidence of significant risks that may impair immediate and unfettered access by FCMs, the use of third-party custodial accounts is no longer justified or appropriate, except in the limited case where the FCM is precluded from holding RIC assets.⁶ Accordingly, Interpretation No. 10 is being amended and FCMs will not be viewed as being in compliance with the requirements of Section 4d(a)(2) if they deposit, hold, or maintain margin funds for customer accounts in third-party custodial accounts, except that those FCMs not eligible to hold the assets of their RIC customers (*i.e.*, due to their affiliation with the RIC or its adviser) may use such accounts under conditions specified herein.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT:

Carlene S. Kim, Senior Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone: (202) 418-5613.

SUPPLEMENTARY INFORMATION:

I. Background: Section 4d and Interpretation No. 10

Section 4d(a)(2) of the CEA and related Commission regulations require that all funds received by an FCM from

⁵ SEC Rule 17f-6, adopted 1996, permits RICs to deposit customer margin directly with FCMs and futures clearing houses. See Rule 17f-6, 17 CFR 270.17f-6, under the Investment Company Act, 15 U.S.C. 80a.

⁶ In February 2005, a notice was published in the *Federal Register* soliciting comments on a withdrawal of Interpretation No. 10 ("Notice of Proposed Withdrawal"). See 70 FR 5417 (February 2, 2005). In response thereto, the Commission received comments from the following entities: Investment Company Institute ("ICI"); National Futures Association ("NFA"); The Joint Audit Committee ("JAC"); Futures Industry Association ("FIA"); and AIG Series Trust ("AIG"). ICI and AIG opposed a withdrawal of Interpretation No. 10; NFA, JAC, and FIA supported a withdrawal of Interpretation No. 10 and an outright prohibition of third-party custodial accounts. The comment letters are available on the Internet at <http://www.cftc.gov/files/foia/comments05>.

¹ See note 7, *infra*.

² See note 8, *infra*.

³ Financial and Segregation Interpretation No. 10, Treatment of Funds Deposited in Safekeeping Accounts, Comm. Fut. L. Rep. (CCH) ¶ 7120 (May 23, 1984) ("Interpretation No. 10"). While specifically directed to third-party accounts of pension plans and registered investment companies, the views expressed in the interpretation applied equally to any other customer of an FCM (*e.g.*, an insurance company).

⁴ See note 12, *infra*.

a customer to margin, guarantee, or secure futures or commodity options transactions and all accruals thereon be accounted for separately, and not be commingled with the FCM's own funds or used to margin the trades of or to extend credit to any other person.⁷ Further, Section 4d(a)(2) has been generally construed to require that customer funds, when deposited at a bank or other depository (*i.e.*, trust company, clearing organization, another FCM), be placed in an account subject to withdrawal upon demand by the FCM carrying the customer account.⁸ Thus, any impediments or restrictions on the FCM's ability to obtain immediate and unfettered access to customer funds are not permitted. The immediate and unfettered access requirements is intended to prevent potential delay or interruption in securing required margin payments that, in times of significant market disruption, could magnify the impact of such market disruption and impair the liquidity of other FCMS and clearinghouses.⁹

Interpretation No. 10 addressed the issue of whether customer funds may be deposited at a bank in a third-party safekeeping account, in lieu of posting such funds directly with an FCM, without being deemed in violation of Section 4d(a)(2).¹⁰ As was stated in Interpretation No. 10, the segregated customer funds account system, whereby customer funds are posted directly with the carrying FCM and held by the FCM on behalf of its customers, satisfies the essential requirements of Section 4d(a)(2) and is

“administratively the most efficient way to treat such funds.”¹¹ At the time, however, RICs were generally precluded from using FCMs and futures clearinghouses as custodians of fund assets and third-party custodial accounts were the only permissible means available to RJC's to participate in the futures market.¹² In view of this legal restriction on RICs' custodial arrangements, the decision was made to permit the use of third-party custodial accounts to hold margin funds, without being deemed to violate Section 4d(a)(2), subject to standards designed to ensure FCMs' immediate and unfettered access to the funds in such accounts.¹³

II. Basis for Amended Interpretation

Developments since the issuance of Interpretation No. 10 require reconsideration of the permissibility of third-party accounts by FCMs to deposit or hold margin funds for customer accounts. First, in 1996, the SEC adopted Rule 17f-6, which permitted RJC's, with limited exception, to deposit, hold, and maintain their assets with FCMs and certain other entities in connection with futures transactions effected on U.S. and foreign exchanges.¹⁴ With the elimination of the requirement that fund assets be held in a bank custodial account, the new rule allowed RJC's to participate in futures trading generally in the same manner as other futures customers by depositing margin funds with FCMs and clearing organizations.

Second, the practical and operational factors that may impair the carrying FCM's right of immediate and unfettered access to customer funds, notwithstanding any terms and conditions stipulated in a third-party custodial agreement, have come to light.

According to the comment letter of the FIA, under the tripartite agreements, customers rather than FCMs have the client relationship with custodian banks. As a result, customer funds held in third-party accounts are not as readily accessible to FCMs as they would be in a segregated customer account context and in fact, these arguments have failed to prevent the release or customer funds held in third-party accounts, without the knowledge or awareness of the carrying FCMs.¹⁵

Regulatory examinations also have found instances of releases of customer funds from third-party custodial accounts. Specifically, Commission audit staff have discovered instances of significant amounts being released from third-party custodial accounts without the knowledge or permission of the FCMs. The Joint Audit Committee, which includes the key self-regulatory organizations that perform front-line supervision of the FCMs, has reported similar instances of unauthorized withdrawals, noting that in such cases, the FCMs may not become aware of the asset release until reconciliation is performed.¹⁶ These findings demonstrate a real and significant risk associated with third-party safekeeping arrangements that are at odds with the immediate and unfettered access standards of Section 4d(a)(2).

Third, third-party custodial accounts pose potential systemic liquidity risks by diverting FCM capital to cover customer margin obligations which would otherwise be available to prevent defaults from affecting the broader marketplace. These risks may be heightened in times of significant

⁷ U.S.C. 6d(a)(2). The Commission segregation requirements are set forth in Regulations 1.20-1.30, 1.32 and 1.36, 17 CFR 1.20-1.30, 1.32 and 1.36.

⁸ *E.g.*, Administrative Determination No. 29 of the Commodity Exchange Authority (Sept. 28, 1937) deposit of customers' funds “under conditions whereby such funds would not be subject to withdrawal upon demand would be repugnant to the spirit and purpose of the Commodity Exchange Act”; Financial and Segregation Interpretation No. 9—Money Market Deposit Accounts and NOW Accounts,” 1 Comm. Fut. L. Rep. (CCH) ¶ 7119 (November 23, 1983) (at 7091-3) (“it has always been the Division's [Division of Trading and Markets] position that customer funds deposited in a bank cannot be restricted in any way, that such funds must be held for the benefit of customers and must be available to the customer and the FCM immediately upon demand”).

⁹ *See, e.g.*, Interpretation No. 10, Comm. Fut. L. Rep. (CCH) ¶ 7120, at 7133 (“[t]he free flow of required margin payments and the required deposits is absolutely essential to the proper functioning of the commodity exchanges. No customer, especially one who may maintain relatively large positions, can be permitted to interrupt that flow, or there will be the potential for serious adverse consequences to other market participants and the marketplace itself”).

¹⁰ *See* Interpretation No. 10, Comm. Fut. L. Rep. (CCH) ¶ 7120.

¹¹ *See* Interpretation No. 10, Comm. Fut. L. Rep. (CCH) ¶ 7120, at 7135.

¹² *See* Section 17(f) of the Investment Company Act, 15 U.S.C. 80a-17(f). At that time (but no longer), under Section 17(f) and related rules RICs were generally permitted to maintain their assets only in the custody of a bank, a member of a national securities exchange, or a national securities depository. FCMs and futures clearinghouses did not come within one of these categories.

¹³ Specifically, it was explained that “[i]n view of the embryonic state of the law and regulatory requirements which may affect the ability of other institutions to participate in the commodity markets, [it] does not now wish to ban altogether the use of safekeeping accounts.” *See* Interpretation No. 10, Comm. Fut. L. Rep. (CCH) ¶ 7120, at 7131.

¹⁴ Investment Company Act Rule 17f-6(b)(3), 17 CFR 270.17f-6(b)(3). Under the rule, a RJC is not permitted to deposit fund assets with an FCM that is an affiliate of the RJC or its adviser. Other conditions in the rule provide that the manner in which the FCM maintains fund assets must be governed by a written contract and any gains on fund transactions must be maintained with the FCM only in *de minimis* amounts.

¹⁵ FIA states that “[d]ue to the tripartite nature of these arrangements, commodity customer funds held in third-party accounts are not accessible to the FCMs in the same manner as commodity customer funds deposited in ordinary segregated bank accounts * * * In this regard, a third party account typically is maintained at the registered investment company's regular custodian, so that the registered investment company rather than the FCM has the client relationship with the custodian bank. Similarly, the FCM's back office personnel do not have the same regular, ongoing communications and interface with custodian bank personnel, as they do with bank personnel * * *” *See* Comment Letter of FIA (April 4, 2005), *supra*, note 6.

¹⁶ *See* Comment Letter of JAC (April 4, 2005), *supra*, note 6. As a result, FCMs may be unaware of market exposure assumed on the undermargined customers' positions. Similarly, FIA noted that the release of customer funds without the knowledge of the FCM could lead to erroneous daily computation of the total amount of customer funds on deposit in segregated accounts, which could then lead to errors in financial reporting statements filed by the FCM with the Commission and self-regulatory organizations (“SROs”). *See* Id.

market volatility when liquidity is most critical.¹⁷

Finally, there remains concern over the parity of treatment between customers with segregated accounts of Regulation 30.7 accounts¹⁸ and customers using third-party custodial accounts in the context of an FCM bankruptcy proceeding.¹⁹ The Division's position is that third-party custodial accounts are subject to the U.S. Bankruptcy Code and applicable provisions in the CEA, which provide that customer's pro rata share of the available customer property.²⁰ Nevertheless, the Division is aware that third-party custodial account arrangements may create unnecessary confusion on the part of the customer and create the potential risk that third-party custodial accounts might receive priority or preference over other customers in an FCM's bankruptcy proceeding, or at least cause additional administrative expenses to be incurred, in a manner inconsistent with the Commission regulations and regulatory objectives.²¹

Under Interpretation No. 10, FCMs were permitted to hold margin funds in third-party custodial accounts in order to avoid precluding participation by RICs in the futures market. The conflicting restriction concerning the custody of fund assets no longer exists, with a minor exception. Together with concerns regarding the risks to the general marketplace and market users, this is persuasive that third-party custodial accounts are no longer necessary or appropriate, except in the limited case where an FCM is precluded from holding RIC assets due to affiliation with a RIC or its adviser. Findings by both Commission audit staff and the SROs of actual releases of customer funds, without the required knowledge or approval of the FCMs, further demonstrate that the risks associated with third-party custodial

accounts are real and material, not merely theoretical, and that the public policy benefits of ensuring the financial integrity of the clearing system outweigh any costs or inconvenience to users of third-party custodial accounts.²² Accordingly, Interpretation No. 10 is being amended to provide that, with the exception noted below, FCMs may not deposit, hold, or maintain customer margin in a third-party account, without being deemed to violate Section 4D(a)(2) of the CEA.²³

The limited case where the use of third-party custodial accounts will be permitted, described at Section III below, encompasses an FCM that is affiliated with a RIC or its adviser. This exception is appropriate because the relief provided by SEC rule 17f-6 from the restriction against using FCMs as the direct custodians of fund assets not available to RICs that use affiliate FCMs to clear their futures transactions. For these RICs, and without SEC action to remedy the situation, the inability to use third-party custodial accounts would result in potentially undue disruption and cost. In addition, it appears that the overwhelming majority of the instances of the current use of a third-party custodial accounts would not encompass this situation.

It should be noted that this amended interpretation regarding the use of third-party custodial accounts for purposes of Section 4d(a)(2) extends equally to secured amount funds held for foreign futures and foreign options customers in third-party accounts pursuant to Regulation 30.7. As a result, FCMs may not deposit, hold, or maintain secured amount funds held for foreign futures and foreign options customers in third-party accounts under Regulation 30.7.

²² Both ICI and AIG noted the operational efficiencies stemming from the use of a single bank custodian to manage fund assets. Further, ICI stated that the disruption and financial cost associated with restructuring of existing custodial relationships would outweigh any "theoretical" benefits. See Comment Letter of ICI (April 4, 2005) and Comment Letter of AIG (April 12, 2005), *supra*, note 6.

²³ Interpretation No. 10 is hereby withdrawn. Further, the views relating to third-party custodial accounts, set forth in related publications are also hereby withdrawn, except that an FCM that is not eligible to rely on SEC rule 17f-6 may rely on them to the extent applicable and relevant. See CFTC Advisory No. 37-96 (Responsibilities of Futures Commission Merchants and Relevant Depositories with Respect to Third Party Custodial Accounts), Comm. Fut. L. Rep. (CCH) ¶ 26,765 (July 25, 1996) and Interpretive Letters, specifically, CFTC Interpretive Letters No. 85-6 (Comm. Fut. L. Rep. (CCH) ¶ 22,579), No. 89-1 (Comm. Fut. L. Rep. (CCH) ¶ 24,404), and No. 90-1 (Comm. Fut. L. Rep. (CCH) ¶ 24,579).

III. Conditional Exception for FCMs Not Eligible for SEC Rule 17f-6

An FCM that is not eligible to rely on SEC Rule 17f-6 due to an affiliation with a RIC or its advisor may use a third-party custodial account for purposes of holding margin fund for such a customer, without being deemed to be in violation of Section 4d(a)(2) or Regulation 30.7, if the following conditions are and continue to be met.²⁴

First, the account must be maintained in the name of the FCM, for the benefit of the customer. Examples of acceptable titles are "[Names of FCM] Customer Funds for the Benefit of X Investment Company." On the other hand, a third-party custodial account may not be maintained in the name of the RIC customer or its adviser.²⁵

Second, the FCM must have the ability to liquidate open positions in an account which goes into deficit or becomes under margined within getting clearance from any third-party custodian of the account of the customer.

Third, the FCM must have the right of withdraw funds from the third-party custodial account with no right of the customer (or its fiduciary) to stop, interrupt or otherwise interfere with such withdrawal. An FCM which is forced to await pre-clearance for margin withdrawals has neither possession nor control of the funds which may be needed for margin purposes. Also, the customer (and its fiduciary) may not withdraw or otherwise have access to the funds in the account except through the FCM. Although provision in a third-party custodial account agreement for a notice to the customer (or to its fiduciary) would not necessarily be inconsistent with the FCM's right of access, a requirement that a customer pre-approve margin withdrawals by the FCM would be deemed inconsistent with the FCM's right of access.²⁶ Finally,

²⁴ These conditions are generally consistent with those set forth in Interpretation No. 10.

²⁵ The FCM also must comply with all applicable requirements in Section 4d(a)(2) and related Commission regulations, including Regulation 1.20(a) which provides that an FCM must obtain and retain an acknowledgement from the depository that it was informed that the customer funds deposited therein are those of FCM customers and are being held on accordance with the provisions of the CEA and Commission regulations. See 17 CFR 1.20(a).

²⁶ Similarly, the FCM could agree in a third-party custodial agreement that before it directs the custodian of a third-party custodial account to dispose of customer funds held therein, the FCM will state that all conditions precedent to its right to direct disposition of customer funds in the account have been met, provided that the only condition which an FCM must satisfy in order to have access to the funds in the account is to state that there has been a default by the customer in

¹⁷ In addition, initial margin requirements typically rise during such periods, creating additional stress on FCM resources. FIA states that the amount of funds in third-party accounts is substantial and that these accounts are heavily concentrated in a small number of FCMs and banks, which factors further exacerbate the systemic liquidity risks. See Comment Letter of FIA, note 6, *supra*.

¹⁸ 17 CFR 30.7.

¹⁹ In Interpretation No. 10, the Division voiced the same concern regarding FCM bankruptcy but concluded that the interest of facilitating institutional participation in the futures market supported the use of third-party custodial accounts. See Interpretation No. 10, Comm. Fut. L. Rep. (CCH) ¶ 7120, at 7134.

²⁰ 11 U.S.C. 766; Commission regulation 190.18, 17 CFR 190.08. However, this issue has not been judicially determined.

²¹ See Interpretation No. 10, Comm. Fut. L. Rep. (CCH) ¶ 7120, at 7134.

third-party custodial accounts will be considered subject to the customary provisions in a commodity customer account agreement to the effect that all money, securities or property in the customer's account, or held for the customer by the FCM or by any clearing organization for a contract market upon which trades of the customer are executed, are pledged with the FCM and the subject to a security. Interest in the FCM's favor to secure any indebtedness at any time owed by the customer to the FCM.

Fourth, a third-party custodial account may not be located at an affiliate of the customer or a fiduciary thereof. Thus, for example, a fund may not maintain a third-party custodial account at a bank with which the fund has other relationships that make the bank an affiliate or fiduciary of the fund.

These conditions are designed to ensure, among other things, that the FCM has free and ready access to margin funds held in a third-party custodial account, with the customer restricted from access to such funds except through the FCM. If the conditions are met, and only in the case of an affiliate FCM for so long as SEC prohibitions exist, a third-party custodial account for a RIC will be deemed to be a segregated account of the FCM within the meaning of Section 4d(a)(2) of the CEA or permissible under Regulation 30.7, as the case may be, and the FCM may include the funds in such account in the calculation of the total amount of customer funds on deposit in segregated accounts or Regulation 30.7 accounts, as the case may be.

IV. Transition Period

In order to ensure that impacted parties, including the FCMs and RICs, are provided with adequate time to make necessary adjustments to their existing custodial arrangements, the amendment to Interpretation No. 10 will not be made effective until nine months following publication in the **Federal Register**.²⁷

Issued in Washington, DC on May 5, 2005, by the Division of Clearing and Intermediary Oversight.

James L. Carley,
Director.

[FR Doc. 05-9386 Filed 5-10-05; 8:45 am]

BILLING CODE 6351-01-M

making a margin payment or any other required deposit.

²⁷ ICI requested that in the event that Interpretation No. 10 is withdrawn, such withdrawal should be made effective no less than nine months following the publication of a final notice. See Comment Letter of ICI, note 6, *supra*.

DEPARTMENT OF DEFENSE

Office of the Secretary

Revision of the Department of Defense 6055.9-Standard, Department of Defense Ammunition and Explosives Safety Standards

AGENCY: Department of Defense.

ACTION: Notice of change.

SUMMARY: The Department of Defense Explosives Safety Board (DDESB) is announcing several changes to Department of Defense 6055.9-Standard, dated July 1999. The DDESB is republishing the Standard dated 5 October 2004 with all changes adopted by the Board since the 1999 edition.

The DDESB is taking this action pursuant to its statutory authority as set forth in Title 10, United States Code, Section 172 (10 U.S.C. 172) and DoD Directive 6055.9, "DoD Explosives Safety Board (DDESB) and DoD Component Explosives Safety Responsibilities," 29 Jul 1996. The Standard to the Office of the Secretary of Defense, the Military Departments (including the Army and Air Force National Guards), the Defense Threat Reduction Agency, the Defense Logistics Agency, the Defense Contract Management Agency, the Coast Guard (when under DoD control), and other parties who produce or manage ammunition and explosives under contract to the DoD. Through DoD 6055.9-STD the DDESB establishes minimum explosives safety requirements for storing and handling ammunition and explosives.

ADDRESSES: Copies of this Standard may be downloaded from the DDESB Web page: <http://www.ddesb.pentagon.mil/>.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this Standard, contact Dr. Jerry M. Ward, phone: (703) 325-2525; e-mail: Jerry.Ward@ddesb.osd.mil DDESB, 2461 Eisenhower Avenue, Room 856C, Alexandria, VA 22331-0600.

SUPPLEMENTARY INFORMATION: Dating back to 1928 when Congress directed the Secretaries of the military departments to establish a joint board of officers to "keep informed on stored supplies of ammunition and components thereof * * *, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations," the DDESB (formerly known as the Ammunition Safety Board) has periodically revised or

updated the Standard based on new scientific or technical information and explosives safety experience. The implementation of a change to DoD 6055.9-STD depends on a formal publication of a change to DoD 6055.9-STD. In order to ensure compliance, the Services and Defense Agencies modify their Service or Agency implementing procedures and standards accordingly.

This revision to the July 1999 version of DoD 6055.9-STD incorporates decisions made by the DDESB at the 31 6th meeting held on 20 August 1998 up to and including the 326th meeting held on 3 March 2004 and votes by DDESB votes by correspondence memoranda dated 3 December 1998, 5 July 2000, 2 November 2000, 28 December 2001, 26 March 2002, 21 November 2002, 27 February 2003, 9 June 2003, and 25 September 2003. Although the decisions adopted by the Board up through the 31 7th meeting held on 25 February 1998 pre-date the July 1999 version, the Standard was in the publication process, and those changes were not included.

The changes included herein address the following:

- Rewrites the Standard in Plain English, expands the glossary to include additional terms used in the Standard, reorganizes the content of the chapters with no changes in explosives safety criteria, incorporates both metric and English units, and provides equations (forward and back calculations) for all tabulated variables.

- Completely revises the Hazard Division (HD) 1.2 quantity-distance (Q-D) criteria and related HD 1.1 minimum hazardous fragment distance criteria as well as incorporates editorial changes taking into account new hazard subdivisions (HD) 1.2.1, and HD 1.2.2). (Corresponding changes were made to HD 1.2.1 and HD 1.2.2 criteria in NATO).

- Redefines "Unit Risk HD 1.2" munitions as "HD 1.2.3," and expands and clarifies the criteria for HD 1.2.3 munitions.

- Replaces Chapter 10 "Theater of Operations" with completely revised Chapter 10 "Military Operations Other than War, Contingency, and Combat," includes new Q-D criteria for asset preservation, provides site planning process for subject operations, defines field storage and handling areas and associated Q-D criteria, expands Glossary to include new terms included in the revised chapter.

- Clarifies that hardened aircraft shelter criteria in chapter 10 are applicable to peacetime operations as well as contingency and combat.

- Clarifies the application of barricaded intraline criteria (18W 1/3) from ammunition and explosives storage facilities to runways and taxiways (used only by DoD Components).

- Establishes criteria for high performance magazines and defines "high performance magazine," "non-robust munitions," "robust munitions," "fragmenting munitions," and "sensitivity groups" (for HD 1.1 and HD 1.2 ammunition in the Joint Hazard Classification System).

- Establishes criteria for non-DoD explosives activities on DoD installations and expands Glossary to include new terms associated with criteria.

- Establishes criteria for permissible exposure to on-base roads from HD 1.1 airblast overpressure and defines "general public" and "installation related personnel".

- Clarifies minimum design requirements for earth-covered magazines and the expected (design) blast loads.

- Expands and clarifies safe separation distances for primary fragments.

- Replaces and expands the liquid propellant criteria with criteria for energetic liquids to include: Energetic Liquid Compatibility Groups and associated mixing rules, summary of hazard classifications and minimum Q-D for energetic liquids used by DoD, criteria for Occupational Safety and Health Administration National Fire Prevention Association Class I through Class III flammable and combustible energetic liquids, criteria for energetic liquid oxidizers, and defines "Energetic Liquid" and "Hybrid propellants".

- Clarifies Q-D criteria and mixing rules for HD 1.4 ammunition, and harmonizes criteria for quantities less than 3,000 lb with HD 1.3 criteria for like quantities.

- Expands and clarifies criteria for piers and wharfs that are restricted loading and unloading ammunition and explosives to and from barges.

- Establishes criteria for handling limited amounts of HD 1.3 and HD 1.4 safety-at-sea and security items.

- Clarifies Q-D criteria for aircraft loaded with HD 1.4 ammunition and selected HD 1.2.2 and HD 1.3 munitions.

- Removes the list of approved earth-covered magazines (ECM) from Chapter 5 and placed in DDESB Technical Paper 15 "Approved Protective Construction," added reference for HNDED-CS-95-01 "Guide for Evaluating Blast Resistance of Non-Standard Magazines," and added definitions for "Aboveground

Magazine" and "Earth-Covered Magazine (ECM)".

- Revises HD mixing rules in Chapter 9.

- Clarifies criteria for application of barricaded intermagazine distance and intraline distance separation.

- Revises criteria for separation of non-explosives ships from explosives ships at anchorages.

- Revises the list of approved munitions for ARMCO revetments.

- Clarifies siting criteria for small quantities of HD 1.1 (<450 lbs), use of ECM distances for other than 7-bar and 3-bar ECM, and application of HD 1.1 of HD 1.2.1 items under certain situations involving small quantities (<450 lbs).

- Defines "Secure Explosives Holding Area" and "Secure Non-Explosives Holding Area" and establishes explosives safety criteria associated with them.

- Clarifies situations where explosives safety site submissions are not required.

- Completely revises Chapter 3 "Hazard Classification, Storage and Compatibility Principles, and Mixing Rules".

- Revises storage criteria for inert items in explosives areas.

- Establishes explosives safety criteria for demilitarization processing equipment and operations for expended .50-caliber and smaller cartridge casings.

- Establishes Hazards of Electromagnetic Radiation to ordnance (HERO) criteria.

- Defines roll-on roll-off (RORO) operations and establishes limits and controls for RORO operations.

- Clarifies conveyance, such as International Standardization Organization (ISO) container, loading and unloading operations permitted at magazines.

In adopting these changes, the DDESB has determined that the Standards, as changed, are at least as protective as the previous Standards.

Dated: May 5, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-9346 Filed 5-10-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0054]

Federal Acquisition Regulation; Information Collection; U.S. Flag Air Carriers Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning U.S. Flag Air Carriers Certification. The clearance currently expires on August 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 11, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Contract Policy Division, GSA, at (202) 501-4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive

Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S. flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if an U.S. flag carrier is available to provide such services. In the event that the contractor selects a carrier other than an U.S. flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than an U.S. flag air carrier.

B. Annual Reporting Burden:

Respondents: 150.

Responses Per Respondent: 2.

Annual Responses: 300.

Hours Per Response: .25.

Total Burden Hours: 75.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0054, U.S. Flag Air Carriers Certification, in all correspondence.

Dated: April 29, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05-9381 Filed 5-10-05; 8:45 am]

BILLING CODE 6820-EP-S

and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning economic price adjustment. The clearance currently expires on August 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 11, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Zaffos, Contract Policy Division, GSA, at (202) 208-6091.

SUPPLEMENTARY INFORMATION:

A. Purpose

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Respondents: 5,346.

Responses Per Respondent: 1.

Annual Responses: 5,346.

Hours Per Response: .25.

Total Burden Hours: 1,337.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0068, Economic Price Adjustment, in all correspondence.

Dated: April, 29, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05-9382 Filed 5-10-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Compensation

AGENCY: DoD.

ACTION: Notice; public meeting of the Defense Advisory Committee on Military Compensation.

SUMMARY: *Name of Committee:* The Defense Advisory Committee on Military Compensation (DACMC).

Committee Membership: Chairman: ADM (Ret) Donald L. Pilling. Members: Dr. John P. White; Gen (Ret) Lester L. Lyles; Mr. Frederic W. Cook; Dr. Walter Oi; Dr. Martin Anderson; and Mr. Joseph E. Jannotta.

General Function of the Committee: The Committee will provide the Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness), with assistance and advice on matters pertaining to military compensation. The Committee will examine what types of military compensation and benefits are the most effective for meeting the needs of the Nation.

Agenda: On June 7, 2005, from 10 a.m. to 12 p.m., the Committee will discuss various aspects of the military pay and benefits system, specifically examining issues identified in the Committee's initial meeting in May 2005.

Procedure: Public participation in Committee discussions at this meeting will not be permitted. Written submissions of data, information, and views may be sent to the Committee contact person at the address shown. Submissions should be received by close of business June 1, 2005. Persons attending are advised that the Committee is not responsible for providing access to electrical outlets.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0068]

Federal Acquisition Regulation; Information Collection; Economic Price Adjustment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

DATES: Tuesday, June 7, 2005, from 10 a.m. to 12 p.m.

ADDRESSES: Crystal City Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Terry Mintz, Designated Federal Official, Defense Advisory Committee on Military Compensation, 2521 S. Clark Street, Arlington, VA 22202. Telephone: 703-699-2700.

Dated: May 5, 2005.

Jeannette Owings-Ballard,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 05-9417 Filed 5-10-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice; meeting of the Defense Department Advisory Committee on Women in the Services.

SUMMARY: Pursuant to Section 10(a), Public Law 92-463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to discuss the 2004 DACOWITS Report. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 5 p.m., May 9, 2005. Oral presentations by members of the public will be permitted only on Monday, May 16, 2005, from 4:45 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each persons desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 5 p.m., May 9, 2005 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on May 9, 2004.

DATES: 16 May 2005, 8:30 a.m.-5 p.m., 17 May 2005, 8:30 a.m.-5 p.m.

Location: Double Tree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MAJ Kimberly Venable, USA DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301-4000. Telephone (703) 697-2122. Fax (703) 614-6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Monday, May 16, 2005, 8:30 a.m.-5 p.m.

Welcome & Administrative Remarks.
Work Life Balance.
Deployment and Families.
Deployment and Women.
Public Forum.

Tuesday, May 17, 2005, 8:30 a.m.-5 p.m.

DoD Mental Health Program.
Army Research Institute.
Army Human Resources Command.
Personal Responsibility Program.

Note: Exact order may vary.

Dated: May 5, 2005.

Jeannette Owings-Ballard,

Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-9416 Filed 5-10-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Thursday, June 23, 2005, from 10:30 a.m. to 5 p.m. and Friday, June 24, 2005, from 9 a.m. to 5 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held in the Hubbs Hall Conference Room at the Scripps Institution of Oceanography, 8602 La Jolla Shores Drive, La Jolla, CA 92037.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5660, telephone 703-696-4120.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meeting will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: May 5, 2005.

I.C. Le Moyné Jr.,

*Lieutenant, Judge Advocate General's Corps,
U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 05-9365 Filed 5-10-05; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 11, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or

reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 5, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Service, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Binational Migrant Education Program (BMEP) State MEP Director Survey.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 52.

Abstract: The survey collects information from State Migrant Education Programs (MEPs) on their participation in the Binational Migrant Education Program (BMEP) to serve children who migrate between Mexico and the U.S.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2755. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, D.C. 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-9334 Filed 5-10-05; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Advance Notice of Intent To Prepare an Environmental Impact Statement for the Disposal of Greater-Than-Class-C Low-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Advance notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) is providing advance notice of its intent to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) on the disposal of Greater-Than-Class-C (GTCC) low-level radioactive waste (LLW) generated by activities licensed by the Nuclear Regulatory Commission (NRC). The primary purpose of this EIS is to address the disposal of wastes with concentrations greater than Class C, as defined in NRC regulations at 10 CFR part 61, resulting from NRC or Agreement State licensed activities (hereafter referred to as NRC licensed activities). DOE also plans to review its waste inventories with a view toward including those wastes with characteristics similar to GTCC waste and which otherwise do not have a path to disposal in the scope of the EIS, as appropriate. DOE intends that this EIS will enable DOE to select any new or existing disposal locations, facilities, and methods for disposal of GTCC LLW and DOE waste with similar characteristics.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) assigned to the Federal Government responsibility for the disposal of GTCC radioactive waste. This EIS will evaluate alternative locations and methods for disposal of these wastes. Potential disposal locations include deep geologic disposal facilities; existing LLW disposal facilities, both commercial and DOE; and new facilities at DOE or other government sites, or on private land. Methods to be considered include deep geologic disposal, greater confinement disposal configurations, and enhanced near-surface disposal facilities.

DOE is issuing this Advance Notice of Intent (ANOI), pursuant to 10 CFR

1021.311(b), in order to inform, and request early comments from, the public and interested agencies about the proposed action, the preliminary range of alternatives, and the potential issues related to DOE's decisions for this category of waste. Following the issuance of this ANOI, DOE intends to conduct further activities to collect updated information from licensees and DOE sites on waste characteristics and projections to support the EIS analysis. As part of that effort, DOE may seek assistance from industry trade associations, Agreement States, NRC, and other appropriate entities. DOE intends to invite the NRC and the Environmental Protection Agency to participate as cooperating agencies in the preparation of this EIS.

DATES: Comments on this ANOI are due June 10, 2005. DOE will consider comments received after June 10, 2005 to the extent practicable. DOE plans to issue a Notice of Intent (NOI) for this EIS in the fall of 2005. The NOI will propose a range of reasonable alternatives for disposal methods and locations. After the NOI is issued, DOE will conduct public scoping meetings to assist in further defining the scope of the EIS and to identify significant issues to be addressed. The dates and locations of all scoping meetings will be announced in the NOI, subsequent **Federal Register** notices, and in local media.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS and questions concerning the proposed project to: James Joyce, Document Manager, Office of Federal Disposition Options (EM-13), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119, Telephone (301) 903-2151, Fax: 301-903-3877, E-mail to: james.joyce@em.doe.gov (use "ANOI Comments" for the subject).

FOR FURTHER INFORMATION CONTACT: To request further information about this EIS, the public scoping meetings, or to be placed on the EIS distribution list, use any of the methods listed under **ADDRESSES** above. For general information concerning the DOE National Environmental Policy Act (NEPA) process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119, Telephone: 202-586-4600, or leave a message at 1-800-472-2756, Fax: 202-586-7031.

This Advance Notice of Intent will be available on the Internet at <http://www.eh.doe.gov/nepa>.

SUPPLEMENTARY INFORMATION:

Background

GTCC waste is LLW generated by NRC licensed facilities with concentrations of radionuclides which exceed the limits established by the NRC for Class C radioactive waste, as defined by 10 CFR 61.55. The NRC defines LLW classes as A, B and C by the concentration of specific short- and long-lived radionuclides, with Class C having the highest concentration limits (see 10 CFR part 61, "Licensing Requirements for Land Disposal of Radioactive Waste").

Section 3(b)(1)(D) of the LLRWPA assigns to the Federal Government responsibility for the disposal of certain GTCC radioactive waste generated by NRC licensees, which is not owned or generated by DOE, by the United States Navy from decommissioning vessels, or by certain other federal activities. The LLRWPA also specifies that GTCC LLW, which is designated a federal responsibility by subparagraph (b)(1)(D) of the Act, be disposed of in a facility licensed by the NRC that the NRC determines is adequate to protect public health and safety. The LLRWPA further states that the Secretary of Energy shall issue a report recommending safe disposal options for such wastes. DOE issued such a report in 1987. The report can be obtained by contacting the Document Manager listed under **ADDRESSES** above.

GTCC LLW occurs in three forms, as discussed in the following sections and summarized in Table 1. The information in Table 1 on waste volumes and characteristics is based on reports that are approximately 10 years old and, therefore, may no longer be accurate. Accordingly, DOE plans to conduct activities to update this information following the issuance of this ANOI. The reports identified below can be obtained by contacting the Document Manager listed under **ADDRESSES** above.

1. Sealed Sources

Sealed sources contain radionuclides in concentrated, relatively small, encapsulated packages. These sources are widely used in medicine, agriculture, research and industry. DOE funded a study by the Idaho National Engineering Laboratory (*Characterization of Greater-Than-Class-C Sealed Sources, Volumes 1, 2, and 3*, DOE/LLW-163 [Idaho Falls, Idaho: Sept. 1994]), which estimated there are about 250,000 GTCC sealed sources in the United States.

In the past, NRC has approached DOE regarding the disposition of unwanted sealed sources that present security or safety and health concerns due to existing storage conditions. As a result of these concerns, DOE has been recovering domestic sealed sources since 1992. This effort has focused on those sources that were determined to pose the highest risk, resulting in recovery, transfer of title and possession to DOE, and secure interim storage by DOE of approximately 10,000 GTCC sealed sources. To date, no disposal path for many of these sealed sources has been identified. The September 11, 2001, terrorist events and subsequent potential threats have heightened concerns that individuals or organizations could gain possession of these sources and use them as the radionuclide source to make a Radiological Dispersal Device (also known as a "dirty bomb"). According to a DOE-funded study by the Idaho National Engineering Laboratory (*Greater-Than-Class C Low-Level Radioactive Waste Characterization: Estimated Volumes, Radionuclides and Other Characteristics*, DOE/LLW-114, Revision 1 [Idaho Falls, Idaho: Sept. 1994]), the expected volume of sealed sources requiring disposal through 2035 is estimated to be as high as 1,913 cubic meters (packaged volume).

2. GTCC-Activated Metals

There are over 100 operating nuclear power plants and approximately 20

non-operating power plants in various phases of decommissioning across the United States. As a result of reactor operations, portions of the reactor barrel and other stainless steel components near the fuel assemblies become highly activated by the neutron flux. The majority of this waste is generated when nuclear power plants are decommissioned, although some may result from maintenance activities performed before decommissioning. Many of these nuclear power plants are applying for and receiving license extensions from NRC. Therefore, much of this waste will be generated in the future. According to DOE/LLW-114, Revision 1, nuclear utilities will generate an estimated 864 to 5,960 cubic meters (packaged volumes) of GTCC-activated metal LLW through 2055.

3. Other GTCC LLW

The third form of GTCC LLW consists of material such as nuclear power plant resin, filter media and general laboratory waste (glove boxes, gloves, wipes, smoke detectors), job wastes or other like debris from NRC-licensed fuel fabrication, fuel testing, and research laboratories. Nuclear utilities will generate an estimated 167 to 866 cubic meters of such waste through the year 2035 (DOE/LLW-114, Revision 1).

In addition, DOE manages waste with radionuclide concentrations similar to GTCC LLW. Under the Atomic Energy Act of 1954, as amended (AEA), DOE has the authority to regulate the management of the radioactive hazard of its wastes; therefore, DOE does not use the 10 CFR part 61 classification system, and most DOE wastes are not generated by NRC-licensed activities. Some of these DOE wastes are very similar to GTCC waste in that they are low-level wastes with concentrations greater than Class C and currently do not have an identified path for disposal. Much of the DOE waste that is similar to GTCC waste is generated by AEA defense activities.

TABLE 1.—SUMMARY OF WASTES BEING CONSIDERED FOR INCLUSION IN THE SCOPE OF THE PLANNED ENVIRONMENTAL IMPACT STATEMENT ADDRESSING LONG-TERM DISPOSITION OF GREATER THAN CLASS C WASTE

Waste form	Primary source	Volume and activity*
Sealed Sources	Primarily medical, industrial, and scientific sources containing long-half-life nuclides (e.g. americium, plutonium) and high activity sources with shorter half-lives such as cesium-137, and strontium-90.	Total estimate through 2035 is up to 1,913 cubic meters, with a total activity industrial, and scientific sources of approximately 4,040,000 curies.
Activated Metal	Primarily from more than 100 nuclear power currently operating, and decommissioning activities at 24 plants.	As decommissioning of reactors proceeds over time, it is estimated that GTCC activated metal will amount to about 864 plants to 5,960 cubic meters, containing 38 to 102 million curies through year 2055.
Other Waste	Assortment of wastes such as glove boxes, fuel fabrication equipment, and trash resulting from source manufacture, research, utility, medical, agricultural and industrial sources.	It is estimated that the quantity of non-DOE waste in this category will amount to about 167 to 866 cubic meters, containing 6,962 to 19,707 curies through 2035.

TABLE 1.—SUMMARY OF WASTES BEING CONSIDERED FOR INCLUSION IN THE SCOPE OF THE PLANNED ENVIRONMENTAL IMPACT STATEMENT ADDRESSING LONG-TERM DISPOSITION OF GREATER THAN CLASS C WASTE—Continued

Waste form	Primary source	Volume and activity*
DOE Waste	DOE also plans to review its waste inventories with a view toward including those wastes with characteristics similar to GTCC waste in the scope of the EIS, as appropriate.	DOE plans to develop an inventory, including volume and activity estimates.

* Volume and activity estimates were obtained from DOE/LLW-114, Revision 1. All volume estimates are packaged volumes.

Purpose and Need for Action

DOE needs to identify the facilities and methods for disposing of GTCC LLW and similar DOE waste. Pursuant to the LLRWPA, the Federal Government is responsible to provide disposal for GTCC LLW generated by NRC licensees. DOE is also responsible for the disposal of its wastes that are similar to GTCC waste. Currently, there are no facilities available for disposal of GTCC waste. Until disposal capability becomes available, the only option for managing GTCC LLW is to store it at its current locations or to find a location that can receive the waste and store it until a disposal facility is available to receive it.

Discussion

In the 1987 report to Congress that provided recommendations on the disposal of GTCC LLW, the Secretary of Energy identified a number of activities that could be undertaken regarding GTCC waste including resolving regulatory uncertainties, addressing technical issues, and taking steps to ensure that entities that generate GTCC LLW bear all reasonable costs of waste disposal.

In 2002, the General Accounting Office (now called the Government Accountability Office or GAO) conducted a review to determine the number of unwanted sealed sources in the United States, to determine the status of recovery efforts within DOE, to identify problems that may exist regarding recovery efforts, and to determine the status of DOE's efforts to provide a disposal facility for unwanted sealed sources. The GAO prepared a report, *Nuclear Nonproliferation-DOE Action Needed to Ensure Continued Recovery of Unwanted Sealed Radioactive Sources*, GAO-03-483, recommending that DOE initiate the process to develop a permanent disposal facility for GTCC LLW, and that it develop a plan that would establish milestones for the process, evaluate disposal options, estimate costs and address legislative, regulatory, and licensing considerations. Although GAO focused its review on sealed sources, DOE recognizes the LLRWPA

requirement that the Federal Government is responsible for disposal of other types of GTCC LLW from NRC-licensed activities. DOE also plans to review its waste inventories with a view toward including those wastes with characteristics similar to GTCC waste in the scope of the EIS, as appropriate.

Potential Range of Alternatives

DOE proposes to dispose of GTCC LLW in a manner that protects human health and the environment. Accordingly, DOE intends to prepare an EIS pursuant to NEPA that would evaluate reasonable alternatives for disposal of these wastes. The scope of the EIS would include disposal capacity that will be needed for (1) current and projected GTCC LLW generated by NRC licensees that does not have a disposal pathway, and (2) DOE wastes with characteristics similar to GTCC waste identified for inclusion in the EIS based on DOE's inventory review.

Alternatives to be considered include disposal in new or existing DOE or commercial facilities, including greater confinement disposal configurations, geologic disposal, or enhanced near-surface disposal facilities. The varied forms of GTCC LLW may make multiple locations and disposal methods desirable, and this EIS would evaluate such options.

New facilities that could offer greater confinement disposal would include capabilities such as boreholes, intermediate depth disposal, and other specially designed facilities. DOE would also consider which types of GTCC LLW could be safely disposed of in existing commercial LLW disposal facilities and DOE disposal facilities. The potential environmental impacts of using both existing and new facilities owned and operated by DOE as well as existing and new facilities owned and operated by commercial licensees would be considered. DOE would evaluate whether all waste types can or should be disposed of in the same facility or whether different waste types would best be disposed of in different facilities. DOE would also consider quantities and time periods when wastes would require disposal and alternative modes of disposal.

Invitation to Comment

DOE invites the public to provide early assistance in identifying the scope and environmental issues to be analyzed in the forthcoming GTCC LLW disposal EIS. DOE will consider public comments and other relevant information in developing a Notice of Intent for publication in the **Federal Register**.

Following issuance of this ANOI, DOE will initiate activities to update information about the GTCC waste types and quantities in need of disposition. DOE will use this information to update the data to be analyzed in the EIS.

Preliminary Identification of Programmatic Issues

DOE plans to consider the issues listed below in its analysis of the potential impacts of alternatives for the disposal of GTCC LLW. DOE invites comment from Federal agencies, Native American tribes, state and local governments, licensees of sealed sources and other GTCC LLW, and the public on these and any other issues that should be considered in the EIS:

- Identifying the best means to obtain an accurate inventory of potential GTCC LLW and DOE waste with similar characteristics including the source, volume, concentrations, and other relevant characteristics.
- Determining the logistics for waste characterization, inventory, transportation, treatment, interim storage and permanent disposal.
- Evaluating mechanisms and scenarios under which GTCC waste could be safely disposed of in existing and/or new LLW disposal facilities.
- Identifying and proposing resolution for issues associated with the chemical constituents in the GTCC LLW that may be regulated under the Resource Conservation and Recovery Act (RCRA).
- Identifying options for ensuring that the beneficiaries of the activities resulting in the generation of GTCC LLW bear all reasonable cost of disposing of such waste.
- Identifying DOE wastes that are appropriate for inclusion in the EIS.

Potential Environmental Issues for Analysis

The DOE has tentatively identified the following environmental issues for analysis in the GTCC EIS. The list is presented to facilitate early comment on the scope of the EIS; it is not intended to be comprehensive nor to predetermine the alternatives to be analyzed or their potential impacts.

- Potential impacts to the general population and workers from radiological and non-radiological releases.
- Potential impacts, including air and water quality impacts.
- Potential transportation impacts from the shipment of GTCC radioactive waste to a disposal site.
- Potential impacts from postulated accidents.
- Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice).
- Potential Native American concerns.
- Irretrievable and irreversible commitment of resources.
- Short-term and long-term land use impacts.
- Compliance with applicable Federal, state, and local requirements.
- Long-term site health and environmental impacts, including potential impacts on groundwater quality.
- Long-term site suitability, including erosion and seismicity.

EIS Process

DOE plans to issue the NOI in the fall of calendar year 2005, which will be followed by a public scoping period. DOE will announce the availability of the Draft EIS in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments. These comments will be considered and addressed in the Final EIS. DOE will issue a Record of Decision no sooner than 30 days after publication of the Environmental Protection Agency's notice of availability of the Final EIS.

Issued in Washington, DC, on May 4, 2005.

C. Russell H. Shearer,

Acting Assistant Secretary for Environment, Safety and Health.

[FR Doc. 05-9397 Filed 5-10-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Methane Hydrate Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, June 7, 2005, 8 a.m. to 5 p.m., Wednesday, June 8, 2005, 8 a.m. to noon.

ADDRESSES: Hotel Galvez, 2024 Seawall Boulevard, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Edith Allison, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202-586-1023.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy; assist in developing recommendations and priorities for the Department of Energy methane hydrate research and development program.

Tentative Agenda:

Tuesday, June 7

- Welcome and Introductions
- Joint meeting with the Interagency Coordinating Committee—8:15 a.m. to 12:30 p.m. Briefings on recent accomplishments, planned activities, issues and concerns by the Department of Energy; U.S. Geological Survey; Minerals Management Service; National Oceanic and Atmospheric Administration; Naval Research Laboratory; and National Science Foundation. Discussion of major interagency issues, including activities with other nations, FY2006 budgets, and reauthorization

- Offshore Studies Update
- Arctic Studies Update
- Open Discussion: future program directions

Wednesday, June 8

- Changes in Advisory Committee structure: reauthorization, requirement for Committee members to be "special Government employees"

- Continue open discussion of future program directions and preparation of letter to the Secretary
- Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral

statements regarding any of the items on the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays. Transcripts will be available upon request.

Issued at Washington, DC, on May 4, 2005.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 05-9396 Filed 5-10-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05-62-000, et al.]

Wolverine Creek Goshen Interconnection LLC; Electric Rate and Corporate Filings

May 4, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wolverine Creek Goshen Interconnection, LLC

[Docket No. EG05-62-000]

Take notice that on April 29, 2005, Wolverine Creek Goshen Interconnection LLC (WCGI) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

WCGI states it is a Delaware limited liability company that will own and operate an interconnection transmission line that will be necessary to connect the wholesale generating facilities that will be owned by its owners companies (*i.e.*, Wolverine Creek Energy LLC and Ridgeline Airtricity Energy, LLC) to the PacifiCorp transmission system. WCGI further states that the interconnection line will be used by WCGI to transport to the PacifiCorp system the power

WCGI's owners produce and sell to their wholesale power customers.

Comment Date: 5 p.m. eastern time on May 16, 2005.

2. Celerity Energy Partners San Diego LLC

[Docket No. EG05-63-000]

Take notice that on April 29, 2005, Celerity Energy Partners San Diego LLC, a California limited liability company (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant states that it will operate one or more networked distributed resource generation facilities. Applicant further states that it will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, eligible facilities. None of the electric energy produced from any such Network Distributed Resource facilities will be sold other than in wholesale sales.

Comment Date: 5 p.m. eastern time on May 20, 2005.

3. Wolverine Creek Energy LLC

[Docket No. EG05-64-000]

Take notice that on April 29, 2005, Wolverine Creek Energy LLC (Wolverine Creek) filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Wolverine Creek states that it is a Delaware limited liability company that will construct, own and operate an approximately 65 MW electric generation facility located in Goshen, Idaho. Wolverine Creek further states it will sell power exclusively at wholesales.

Comment Date: 5 p.m. eastern time on May 16, 2005.

4. ISO New England Inc.

[Docket No. ER01-316-016]

Take notice that on April 27, 2005, ISO New England Inc. filed its Index of Customers for the first quarter of 2005 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: 5 p.m. eastern time on May 18, 2005.

5. Northern Iowa Windpower II LLC

[Docket No. ER02-2085-003]

Take notice that on April 27, 2005, Northern Iowa Windpower II LLC

submitted a compliance filing pursuant to the Commission's letter order issued April 6, 2005 in Docket No. ER02-2085-002 to include the change in status reporting requirements adopted by the Commission in Order No. 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. eastern time on May 18, 2005.

6. Duke Energy Fayette, LLC

[Docket No. ER03-185-004]

Take notice that on April 27, 2005, Duke Energy Fayette, LLC (Duke Fayette) submitted for filing revisions to its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, to include the change in status reporting requirements adopted by the Commission in Order No. 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

Duke Fayette states that copies of the filing were served on the parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on May 18, 2005.

7. Midwest Independent Transmission System Operator, Inc.; Ameren Services Co., et al.

[Docket Nos. ER05-6-020, EL04-135-022, EL02-111-040, EL03-212-036]

Take notice that on April 27, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners (collectively Applicants) jointly submitted for filing revisions to Schedule 21 of the Midwest ISO Open Access Transmission and Energy Markets Tariff in compliance with the Commission's November 18, 2004 Order in Docket No. ER05-6-000, *et al.*, *Midwest Independent Transmission System Operator, Inc.* 109 FERC ¶ 61,168 (2004) to add the lost revenues associated with Virginia Electric and Power Company joining PJM Interconnection, Inc. on May 1, 2005.

Applicants state that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on May 18, 2005.

8. PacifiCorp

[Docket No. ER05-429-001]

Take notice that on April 28, 2005, PacifiCorp submitted a refund report in compliance with the Commission's

letter order issued March 1, 2005 in Docket No. ER05-429-000.

Comment Date: 5 p.m. eastern time on May 19, 2005.

9. Southern Company Services, Inc.

[Docket No. ER05-518-001]

Take notice that, on April 28, 2005, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), submitted a compliance filing, under protest, pursuant to the Commission's order issued March 29, 2005 in Docket No. ER05-518, 110 FERC ¶ 61,379 (2005).

Southern Companies state that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on May 19, 2005.

10. Premcor Power Marketing LLC

[Docket No. ER05-680-001]

Take notice that on April 28, 2005, Premcor Power Marketing LLC (Premcor) submitted a compliance filing pursuant to a Commission letter order issued April 5, 2005 in Docket No. ER05-680-000.

Premcor states that copies of the filing were served on parties on the official service list in Docket No. ER05-680-000.

Comment Date: 5 p.m. eastern time on May 19, 2005.

11. Merrill Lynch Capital Services, Inc.

[Docket No. ER99-830-010]

Take notice that on April 28, 2005, Merrill Lynch Capital Services, Inc. submitted a compliance filing revising its market-based rate tariff pursuant to the Commission's April 14, 2005 letter order in Docket No. ER05-830-009, 111 FERC ¶ 61,036 (2005) to incorporate the reporting requirements adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC (61,097 (2005)).

Comment Date: 5 p.m. eastern time on May 19, 2005.

12. Reliant Energy Wholesale Generation, LLC

[Docket No. ER05-875-000]

Take notice that on April 27, 2005, Reliant Energy Wholesale Generation, LLC (REWG) filed with the Commission a Notice of Succession notifying the Commission that REWG is succeeding to the rate schedules of Reliant Energy

Aurora, LP for Reactive Support and Voltage Control from Generation Sources Service and for Black Start Service.

Comment Date: 5 p.m. eastern time on May 18, 2005.

13. Wisconsin Public Service Corporation

[Docket No. ER05-877-000]

Take notice that on April 28, 2005, Wisconsin Public Service Corporation (WPSC) tendered for filing a revised Generation Maintenance and Power Exchange Transaction Specifications (Revised Service Agreement) between WPSC and Manitowoc Public Utilities (MPU) under WPSC's Coordination Sales Tariff CS-1, FERC Electric Tariff, First Revised Volume No. 5. WPSC requests an effective date of April 1, 2005, the day that service commenced under the Revised Service Agreement.

WPSC states that copies of the filing were served upon MPU and the Public Service Commission of Wisconsin.

Comment Date: 5 p.m. eastern time on May 19, 2005.

14. Mid-Continent Area Power Pool

[Docket No. ER05-878-000]

Take notice that on April 27, 2005, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, submitted for filing a notice that MAPP Schedule F is deemed to be modified to adopt the North American Electric Reliability Council's most recent version of its Transmission Loading Relief Procedures.

Comment Date: 5 p.m. eastern time on May 18, 2005.

15. Virginia Electric and Power Company

[Docket No. ER05-879-000]

Take notice that on April 28, 2005, Virginia Electric and Power Company (Dominion) tendered for filing a Notice of Cancellation of its Open Access Transmission Tariff (OATT), effective May 1, 2005. Dominion states that on May 1, 2005, Dominion will transfer functional control of its facilities and transmission provider responsibilities to PJM Interconnection, LLC (PJM), and PJM will commence transmission service under PJM's OATT over Dominion's transmission facilities.

Comment Date: 5 p.m. eastern time on May 19, 2005.

16. San Diego Gas & Electric Company

[Docket No. ER05-880-000]

Take notice that on April 28, 2005, San Diego Gas & Electric Company (SDG&E) tendered for filing its Rate Schedule FERC No. 12, Must-Run

Service Agreement (RMR Agreement) between SDG&E and the California Independent System Operator Corporation (CAISO). SDG&E requests an effective date the later of (1) June 1, 2005, (2) the first day of the month following the date on which SDG&E acquires title to the Miramar Energy Facility CTI, or (3) the first day of the month following the date it is permitted to become effective by the Commission.

SDG&E states that copies of the filing have been served on the CAISO, the California Public Utilities Commission, and the Electricity Oversight Board of the State of California.

Comment Date: 5 p.m. eastern time on May 19, 2005.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05-881-000]

Take notice that on April 28, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a large generator interconnection agreement among High Prairie Wind Farm I, LLC, Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation, and the Midwest ISO. Midwest ISO requests an effective date of April 11, 2005.

Midwest ISO states that a copy of this filing was served on High Prairie Wind Farm I, LLC and Interstate Power and Light Company.

Comment Date: 5 p.m. eastern time on May 19, 2005.

18. Armstrong Energy Limited Partnership, LLLP; Dominion Energy Brayton Point, LLC; Dominion Energy Kewaunee, Inc.; Dominion Energy Manchester Street, Inc.; Dominion Energy New England, Inc.; Dominion Energy Salem Harbor, LLC; Dominion Retail, Inc.; Dresden Energy, LLC; Elwood Energy LLC; Fairless Energy, LLC; Pleasants Energy, LLC; State Line Energy, L.L.C.; Troy Energy, LLC

[Docket Nos. ER05-887-000, ER05-888-000, ER05-889-000, ER05-890-000, ER05-891-000, ER05-892-000, ER05-893-000, ER05-894-000, ER05-895-000, ER05-896-000, ER05-897-000, ER05-898-000, ER05-899-000]

Take notice that on April 28, 2005, Armstrong Energy Limited Partnership, LLLP; Dominion Energy Brayton Point, LLC; Dominion Energy Kewaunee, Inc.; Dominion Energy Manchester Street, Inc.; Dominion Energy New England, Inc.; Dominion Energy Salem Harbor, LLC; Dominion Retail, Inc.; Dresden Energy, LLC; Elwood Energy LLC; Fairless Energy, LLC; Pleasants Energy, LLC; State Line Energy, L.L.C. and Troy Energy, LLC (Applicants) submitted

amendments to their market-based rate tariffs to eliminate the restriction on sales within Dominion Virginia Power's service territory. The Applicants request an effective date of May 1, 2005.

Comment Date: 5 p.m. eastern time on May 19, 2005.

19. New York Independent System Operator, Inc.

[Docket No. ER05-900-000]

Take notice that on April 28, 2005, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open Access Transmission Tariff (OATT) and its Market Administration and Control Area Services Tariff (Services Tariff). NYISO states that these proposed changes would increase from 365 MW to 499 MW the applicability of special balancing rules and the exemption from undergeneration penalties to generation supplying the New York City steam distribution system. The NYISO requests an effective date of May 1, 2005.

The NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, and on the New York State Public Service Commission. The NYISO has also served the electric utility regulatory agencies of New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern time on May 19, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Linda L. Mitry,

Deputy Secretary.

[FR Doc. E5-2299 Filed 5-10-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket Number ORD-2005-0009; FRL-7910-6]

Board of Scientific Counselors, Drinking Water Subcommittee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), announces two meetings of the Board of Scientific Counselors (BOSC) Drinking Water Subcommittee.

DATES: One teleconference call meeting will be held on Monday, June 6, 2005, from 1 to 4 p.m. A face-to-face meeting will be held beginning Tuesday, June 21 (8:30 a.m. to 5 p.m.), continuing on Wednesday, June 22, 2005 (8:30 a.m. to 5 p.m.), and concluding on Thursday, June 23, 2005 (8:30 a.m. to 2 p.m.). All times noted are eastern standard time. Meetings may adjourn early if all business is completed.

ADDRESSES: Conference calls: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the teleconference meeting from Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Face-to-Face Meeting: The face-to-face meeting will be held at the U.S. EPA, Andrew W. Breidenbach Environmental Research

Center, 26 W. Martin Luther King Dr., Cincinnati, OH 45268.

Document Availability

Draft agendas for the meetings are available from Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for the draft agendas will be accepted up to 2 business days prior to each conference call/meeting date. The draft agendas also can be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Any member of the public interested in making an oral presentation at the conference call or at the face-to-face meeting may contact Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for making oral presentations will be accepted up to 2 business days prior to each conference call/meeting date. In general, each individual making an oral presentation will be limited to a total of three minutes.

Submitting Comments

Written comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of this section. Written comments will be accepted up to 2 business days prior to each conference call/meeting date.

FOR FURTHER INFORMATION CONTACT: Edie Coates, Designated Federal Officer, Environmental Protection Agency, Office of Research and Development, Mail Code B105-03, Research Triangle Park, NC 27711; telephone (919) 541-3508; fax (919) 541-3335; e-mail coates.edie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

This notice announces two meetings of the BOSC Drinking Water Subcommittee. The purpose of the meetings are to evaluate EPA's Drinking Water Research Program. Proposed agenda items for the conference call includes, but is not limited to: charge questions, objective of program reviews, and background on the U.S. EPA's Drinking Water Research Program. Proposed agenda items for the face-to-face meeting include, but are not limited to: presentations by key EPA staff involved in the Drinking Water Research Program, poster sessions on ORD's Drinking Water research, and preparation of the draft report. The conference call and the face-to-face meeting are open to the public.

Information on Services for the Handicapped: Individuals requiring

special accommodations at this meeting should contact Edie Coates, Designated Federal Officer, at (919) 541-3508 at least five business days prior to the meeting so that appropriate arrangements can be made to facilitate their participation.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD-2005-0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents are available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agendas may be viewed at the Board of Scientific Counselors, Drinking Water Meetings Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgrstr/>.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number (ORD-2005-0009).

For those wishing to make public comments, it is important to note that EPA's policy is that comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide

a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks mailed or delivered to the docket will be transferred to EPA's electronic public docket. Written public comments mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (ORD-2005-0009) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and it allows EPA to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet home page, <http://www.epa.gov>, select "Information Sources," "Dockets," and "EDOCKET." Once in the system, select "search," and then key in Docket ID No. ORD-2005-0009. The system is an anonymous access

system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to ORD.Docket@epa.gov, Attention Docket ID No. ORD-2005-0009. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM mailed to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in Word, WordPerfect or rich text files. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. ORD-2005-0009.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD-2005-0009 (**note:** This is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: May 5, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05-9404 Filed 5-10-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2004-0370; FRL-7707-3]

Endothall Risk Assessments and Preliminary Risk Reduction Options; Notice of Availability

AGENCY: Environmental Protection Agency EPA.

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the dicarboxylic acid herbicide endothall,

and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for endothall through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP-2004-0370, must be received on or before July 11, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Mika J. Hunter, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:(703) 308-0041; fax number: (703) 308-8041; e-mail address: hunter.mika@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2004-0370. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgrstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is

restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0370. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2004-0370. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0370.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2004-0370. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as

CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for endothall, a dicarboxylic acid herbicide, and encouraging the public to suggest risk management ideas or proposals. Endothall is used as an aquatic herbicide, biocide, and a desiccant. As

an aquatic herbicide, endothall is used to control submerged aquatic vegetation and algae in lakes, ponds, and irrigation canals. As a biocide, endothall is used to control mollusks in once-through cooling water systems. As a desiccant, endothall is used on cotton, hops, potatoes, clover, and alfalfa. EPA developed the risk assessments and preliminary risk reduction options for endothall through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Endothall is a dicarboxylic herbicide used as an aquatic herbicide, biocide, and a desiccant. Currently, three forms of endothall are registered as active ingredients in end-use-products: Endothall acid, endothall dipotassium salt, and endothall N,N-dimethylalkylamine salt. All three forms are used as aquatic herbicides, but only the N,N-dimethylalkylamine salt is used as a desiccant on hops, potatoes, cotton, clover, and alfalfa.

The Agency is concerned with occupational exposures for aquatic applications. In addition, the Agency is concerned with environmental risks associated with the use of endothall, primarily the use of the N,N-dimethylalkylamine salt. At this time the Agency has limited information about the environmental fate and toxicity characteristics of this form of endothall, creating uncertainties in the risk assessment. To adequately protect the environment it may be necessary to change current use and/or application practices. Specific areas in which the Agency is requesting public input are provided in a separate document available in the endothall docket.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for endothall. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to endothall, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For endothall, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments, and limited use. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for Endothall. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide

residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 28, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05-9220 Filed 5-10-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2004-0382; FRL-7712-6]

Thidiazuron Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the pesticide thidiazuron, and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for thidiazuron through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP-2004-0382, must be received on or before July 11, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8195; fax number: (703) 308-7042; e-mail address: pates.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2004-0382. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket,

will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to

consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2004-0382. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2004-0382. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address

identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2004-0382.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2004-0382. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments, and related documents for the phenylurea herbicide thidiazuron, and encouraging the public to suggest risk management ideas or proposals. EPA developed the risk assessments for thidiazuron through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Thidiazuron is used as a pre-harvest/ foliar cotton defoliant, whereby removing green leaves and immature fruiting structures that contribute to cotton staining. Registered formulations include: wettable powders, soluble concentrates, emulsifiable concentrates, and liquids; all of which can be applied via ground or air. As such, thidiazuron is primarily used in the major cotton producing areas, which consist of the Mid-South, Southeast, and Western United States.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for thidiazuron. Such comments and input could address the availability of additional information to further refine the risk assessments and risk management proposals for addressing potential ecological risk concerns, or information that would enhance the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice,

EPA is also, providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to thidiazuron, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL-7357-9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For thidiazuron, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its overall risk, limited use, use pattern, limited issues, and the few affected stakeholders. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for thidiazuron. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use

products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 2, 2005.

Peter Caulkins,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05-9398 Filed 5-10-05; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 4, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 11, 2005. If

you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418-0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-1070.

Title: Allocation and Service Rules for the 71-76, 81-86, and 92-95 GHz Bands, WT Docket No. 02-146, FCC 05-45, Memorandum Opinion and Order.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 1,000.

Estimated Time per Response: 1.5-3.5 hours.

Frequency of Response: On occasion reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 12,000 hours.

Total Annual Cost: \$1,830,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In the Memorandum Opinion and Order, the Commission addressed a Petition for Reconsideration filed by the Wireless Communications Association International, Inc. (WCA) on February 23, 2004. WCA sought reconsideration of the Commission's Report and Order, adopted on October 16, 2003, and released on November 4, 2003, 69 FR 3257, January 23, 2004, which adopted service rules to promote the private sector development and use of the spectrum in the 71-76 GHz, 81-86 GHz, and 92-95 GHz bands. The petition and the instant Memorandum Opinion and Order focus exclusively on the licensed use of the 71-76 GHz and 81-86 bands. In the Memorandum Opinion and Order, the Commission granted WCA's request that we adopt an interference analysis requirement. Because licensees are now required to submit an interference analysis to a third party database manager prior to link registration, we are modifying the currently approved collection to accommodate this new rule requirement. The interference will

facilitate entry and development of the 70–80–90 GHz service by lowering the risk of interference and thereby ensuring continued investment.

OMB Control No.: 3060–1081.

Title: Federal-State Joint Board on Universal Service (ETC Designation), CC Docket No. 96–45.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 22.

Estimated Time per Response: .25–3 hours.

Frequency of Response: Annual reporting requirements and recordkeeping requirement.

Total Annual Burden: 242 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In the ETC Designation Framework Order (FCC 05–46), the Commission adopted additional annual reporting requirements and a recordkeeping requirement for Eligible Telecommunications Carriers (ETCs). ETCs will be required to report: (1) Progress towards meeting its five year service quality improvement plan; (2) information on outages lasting more than 30 minutes; (3) the number of consumer complaints per 1,000 handsets; (4) information detailing the number of unfulfilled requests for service from potential customers for a twelve month period; (5) certify compliance with service quality standards; (6) certify the ability to function in emergency situations; (7) certify local usage plan is comparable to ILEC's; and (8) certify ETC acknowledges it may be required to provide equal access. This information collection is necessary to ensure that each ETC satisfies its obligation under section 214(e) of the Communications Act of 1934, as amended, to provide services supported by the universal service mechanism throughout the areas for which each ETC is designated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–9406 Filed 5–10–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 4, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 11, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to Judith-B.Herman@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at (202) 418–0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0713.

Title: Alternative Broadcast Inspection Program (ABIP) Compliance Notification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 53.

Estimated Time per Response: 5 minutes (.084 hours).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 220 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The ABIP is an agreement between the Federal Communications Commission's Enforcement Bureau and an entity, usually a state broadcast association, in which the entity arranges for the inspection of the broadcast station to determine compliance with FCC regulations. The inspections are conducted on a voluntary basis and the entities notify the local FCC District Office or Resident Agent office, in writing via letter of those stations that pass the ABIP inspection and have been granted a Certificate of Compliance. The FCC's Enforcement Bureau standardized the existing Alternative Broadcast Inspection Program (ABIP) in 2003 to establish a specific, uniform arrangement for the inspection of broadcast stations. This information will be used by FCC to determine which broadcast stations comply with FCC Rules and will not be subject to routine inspections conducted by the FCC's District Offices. Without this information, the FCC would not be able to determine which stations should be exempt from random inspections.

OMB Control No.: 3060–0989.

Title: Procedures for Applicants Requiring Section 214 Authorizations for Domestic Interstate Transmission Lines Acquired through Corporate Control, 47 CFR Sections 63.01, 63.03 and 63.04.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 86.

Estimated Time per Response: 1.5–12 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 958 hours.

Annual Cost Burden: \$70,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Procedures for this information collection are set forth for common carriers requiring authorization under section 214 of the Communications Act (Act) of 1934, as amended to acquire domestic interstate transmission lines through a transfer of control. Under section 214 of the Act,

carriers must obtain FCC approval before constructing, acquiring, or operating an interstate transmission line. Acquisitions involving interstate common carriers require affirmative action by the FCC before the acquisition can occur. The Commission is requesting extension (no change) to this information collection in order to obtain the full three-year clearance. After this 60 day comment period has ended, the Commission will submit this information collection to OMB for approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-9407 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 4, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 10, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418-0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 250,520.

Estimated Time Per Response: 1.25 hours.

Frequency of Response:

Recordkeeping requirement, third party disclosure requirement, and on occasion and every 10 year reporting requirements.

Total Annual Burden: 219,205 hours.

Total Annual Cost: \$50,104,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission adopted and released two rulemakings that revised this information collection. FCC 04-135 now includes the addition of radio services: Broadband Radio (formerly Multipoint Distribution Service radio service); Educational Broadband Services (formerly the VX radio service); and a new Schedule E has been created for the technical data for these services. FCC 04-23 made changes to Schedules D, I and M to items concerning the Quiet Zone. The requirements include: (1) To provide for immediate processing of applications that may implicate Quiet Zones, in the event that the applicant indicates that it has obtained consent, if required by section 1.924, of the Quiet Zone entity; (2) to clarify that applicants may provide notification to and begin coordination with Quiet Zone entities, where required, in advance of filing an application with the Commission; (3) amend section 101.31(b)(1)(v) to permit Part 101 applicants to initiate

conditional operation, provided they have obtained prior consent of the Quiet Zone entity to the extent required, and are otherwise eligible to initiate conditional operations over the proposed facility; similarly, the Bureau clarifies that, for services in which individual station licenses are not issued, licensees may initiate operations immediately upon receipt of the Quiet Zone entity's consent; and (4) to clarify that either the applicant or the applicant's frequency coordinator may notify and initiate any required coordination proceedings with the Quiet Zone entity.

Note: For purposes of simplicity, all areas implicated by section 1.924 will be referred to as "Quiet Zones." We note that the only area with the formal designation of "Quiet Zone" is the National Radio Quiet Zone, which encompasses the National Radio Astronomy Observatory and the Naval Radio Research Observatory.

The Commission uses the information provided by applicants on the FCC Form 601 to update its database and to determine where the applicant is legally, technically and financially qualified to provide licensed services and to make proper use of the frequency spectrum.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-9408 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05-1263]

Annual Adjustment of Revenue Thresholds

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the 2004 revenue threshold between Class A carriers and Class B carriers is increased to \$125 million. The 2004 revenue threshold between larger Class A carriers and mid-sized carriers is increased to \$7.403 billion.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Pricing Policy Division, Wireline Competition Bureau at (202) 418-0812.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice released April 28, 2005. This notice announces the inflation-adjusted 2004 revenue thresholds used for classifying carrier categories for various accounting and reporting purposes: (1)

Distinguishing Class A carriers from Class B carriers; and (2) distinguishing larger Class A carriers from mid-sized carriers. The revenue threshold between

Class A carriers and Class B carriers is increased to \$125 million. The revenue threshold between larger Class A carriers and mid-sized carriers is

increased to \$7.403 billion. The revenue thresholds for 2004 were determined as follows:

	Mid-sized threshold	Larger Class A threshold
(1) GDP-CPI Base	86.68	102.40.
(2) 2004 GDP-CPI	108.30	108.30.
(3) Inflation Factor (line 2+1)	1.2494	1.0576.
(4) Original Revenue Threshold	\$100 million	\$7 billion.
(5) 2004 Revenue Threshold (line 3*4)	\$125 million	\$7.403 billion.

Federal Communications Commission.

Tamara L. Preiss,

Chief, Pricing Policy Division.

[FR Doc. 05-9211 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98-67; DA 05-1175]

National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2005 Through June 2006

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on the National Exchange Carrier Association's (NECA) proposed telecommunications relay service (TRS) compensation rates, fund size, and carrier contribution factor for the period July 1, 2005 through June 30, 2006.

DATES: Interested parties may file comments on or before May 13, 2005. Reply comments may be filed on or before May 25, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418-2247 (voice), (202) 418-7898 (TTY), or e-mail at Dana.Jackson@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 05-1175, released April 28, 2005. When filing comments, please reference CC Docket No. 98-67. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments

filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>.

Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comment and reply comment to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments and reply comments by Internet e-mail. To get filing instructions, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service

first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204 Washington, DC 20554.

Parties who choose to file by paper should also submit their comment and reply comments on diskette. These diskettes should be submitted, along with three paper copies, to: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room CY-C417, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98-67, type of pleading (comment and reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. A copy of this document, NECA's submission, and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th

Street, SW., Room CY-A257, Washington, DC 20554. This document, NECA's submission, and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, BCPI, Inc. Customers may contact BCPI, Inc. at their Web site <http://www.bcpweb.com> or call 1-800-378-3160. A copy of NECA's submission may also be found by searching on the Commission's Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CC Docket No. 98-67 into the Proceeding block). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

Synopsis

On April 25, 2005, pursuant to 47 CFR 64.604(c)(5)(iii)(H), the National Exchange Carrier Association (NECA), the Interstate Telecommunications Relay Services (TRS) Fund Administrator, submitted its annual payment formula and fund size estimate for the Interstate TRS Fund for the period July 1, 2005 through June 30, 2006. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (filed April 25, 2005) (2005 TRS Rate Filing).

NECA proposes a carrier contribution factor of 0.00528, and a fund size requirement of \$413.3 million. NECA proposes per completed minute compensation rates of: \$1.312 for traditional TRS and for Internet Protocol (IP) Relay (compared to \$1.398 for the 2004-2005 fund year); \$1.579 for Speech-to-Speech (STS) (compared to \$1.596 for the 2004-2005 fund year); and \$5.924 for Video Relay Service (VRS) (compared to \$7.596 for the 2004-2005 fund year). In the 2004 TRS Report and Order and FNPRM, the Commission sought comment on whether the Commission should require the TRS Fund administrator to determine and propose separate compensation rates for IP Relay and traditional TRS. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of

Proposed Rulemaking, (2004 TRS Report and Order and FNPRM), CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, 19 FCC Rcd 12475, pages 12564-12565, paragraph 233, June 30, 2004; published at 69 FR 53346 and 69 FR 53382, September 1, 2004.

NECA indicates that if the Commission did require separate compensation rates, NECA would propose an IP Relay rate of \$1.278, and a traditional TRS rate of \$1.440. We seek further comment on whether the Commission should adopt separate compensation rates for IP Relay and traditional TRS for the 2005-2006 fund year.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05-9405 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 05-171; FCC 05-84]

Request for Comments on the Use of Video News Releases by Broadcast Licensees and Cable Operators

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document, reminds broadcast licensees, cable operators and others of sponsorship identification requirements applicable to video news releases and solicits public comment on the use of video news releases by broadcast licensees and cable operators.

DATES: Comments may be filed on or before June 22, 2005, and reply comments may be filed on or before July 22, 2005.

ADDRESSES: You may submit comments, identified by docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

FOR FURTHER INFORMATION CONTACT: Hope Cooper Media Bureau (202) 418-

1440, TTY (202) 418-7172, or e-mail at Hope.Cooper@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in MB Docket No. 05-171, FCC 05-84, released April 13, 2005. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site <http://www.bcpweb.com> or call 1-800-378-3160.

Synopsis

1. The Commission has recently received a large number of requests that it consider whether the use of "video news releases" or "VNRs," by broadcast licensees, cable operators, and others complies with the Commission's sponsorship identification rules. (See, e.g., Letter from Josh Silver, Executive Director, Free Press, *et al.*, to Honorable Kevin Martin, Chairman, FCC *et al.* (March 21, 2005) (stating that the authors "are writing you today on behalf of nearly 40,000 Americans who have signed a petition urging the Federal Communications Commission to investigate all broadcasters who distribute government-sponsored news reports without properly identifying their source"); Letter from Honorable John F. Kerry, U.S. Senator, to Honorable Michael Powell, Chairman, FCC (March 15, 2005); Letter from Honorable Daniel Inouye, U.S. Senator, to Honorable Michael K. Powell, Chairman (March 14, 2005). Also, the Commission has received thousands of e-mails about this practice.) VNRs are essentially prepackaged news stories, that may use actors to play reporters and include suggested scripts to introduce the stories. (See, e.g., Joe Mandese, *The Art of Manufactured News*, Broadcasting and Cable, March 28, 2005, at 24; David Barstow and Robin Stein, *The Message Machine: How the Government Makes News; Under Bush, a New Age of Prepackaged News*, New York Times, March 13, 2005, at A1.) These practices allow such externally prepackaged news stories to be aired, without alteration, as broadcast or cable news. Some of the parties contacting the Commission have suggested that broadcast licensees and cable operators may have aired VNRs with news stories containing material paid for, prepared and/or provided to them by or on behalf of commercial, governmental and other entities without

disclosing, at the time of the airing, the source of and the circumstances surrounding their acquisition of such material.

2. With this Public Notice (PN), the Commission reminds broadcast licensees and cable operators that air VNRs, as well as all entities and individuals involved in the production and provision of the material at issue here, of their respective disclosure responsibilities under the Commission's sponsorship identification rules. These rules are grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them with the programming offered over broadcast stations and cable systems. (See, e.g., *Applicability of Sponsorship Identification Rules*, PN, 28 FR 4732 (May 6, 1963); *Sponsorship Identification Rules, Applicability*, 40 FR 41936 (September 3, 1975).) For the reasons noted in this PN, and as provided for in the statutory provisions and in the Commission's rules, whenever broadcast stations and cable operators air VNRs, licensees and operators generally must clearly disclose to members of their audiences the nature, source and sponsorship of the material that they are viewing. We will take appropriate enforcement action against entities that do not comply with these rules. This PN is confined to the disclosure obligations required under section 317 and our rules thereunder, and does not address the recent controversy over when or whether the government is permitted to sponsor VNRs, which is an issue beyond the Commission's jurisdiction.

The Sponsorship Identification Rules

3. The sponsorship identification rules, which are contained in sections 317 and 507 of the Communications Act of 1934, as amended (the "Act") (47 U.S.C. 317, 508), and sections 73.1212 and 76.1615 of the Commission's rules (47 CFR 73.1212, 76.1615), generally require that, when payment has been received or promised to a broadcast licensee or cable operator for the airing of program material, at the time of the airing, the station or cable system must disclose that fact and identify who paid or promised to provide the consideration.

4. Specifically, section 317(a)(1) of the Act provides, in pertinent part:

All matter broadcast by any radio station (The Commission has ruled that the sponsorship identification requirements also apply to origination programming by cable operators. *Amendment of the Commission's Sponsorship Identification Rules* (Sections 73.119, 73.289, 73.654, 73.789

and 76.221), Report and Order (R&O), 40 FR 18395 (April 28, 1975), paragraph 37 ("We see no reason why the rules for such cablecasting should be different from those for broadcasting, for the consideration of keeping the public informed about those who try to persuade it would appear to be the same in both cases.") Under our rules, origination cablecasting is defined as "programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator." 47 CFR 76.5(p). The broadcast and cable rules are substantially identical with the single exception that paragraph (c) of the broadcast rule, which pertains to reports under section 508 of the Act (which applies only to broadcasters), is not applicable to cable television. See *In the Matter of Amendment of the Commission's Sponsorship Identification Rules*, R&O, 40 FR 18395 (April 28, 1975).) for which any money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person. * * *

To provide parties with the information necessary to air these disclosures, section 507(a) requires that each station employee who has accepted or agreed to accept consideration for the airing of program matter, or any person who has paid or has agreed to so pay any such employee, must disclose that fact to the station prior to the airing of the matter. Similarly, section 507(b) imposes such a duty of disclosure upon any person involved in the production or preparation of broadcast matter who receives or agrees to receive, or provides or promises to provide, such consideration. The disclosure must be made to each payee's employer, the person for whom the material is being produced, or the licensee. Section 507(c) requires this disclosure by anyone who supplies broadcast matter to the person to whom he or she provides the matter. In this way, the information must ultimately be provided up the chain of production and distribution, before the time of broadcast, to the licensee so that it can timely air the required disclosure.

5. Moreover, section 317(b) of the Act requires that any broadcast station that has received such information pursuant to section 507 must air the section 317 announcement, as if the consideration was paid to the station for airing the broadcast matter, even if the station

itself received no such consideration. (See, e.g., *Letter to Mr. Earl Glickman, President, General Media Associates, Inc.*, 3 FCC 2d 326 (1966); *KMAP, Inc.*, Memorandum Opinion and Order, 44 FCC 2d 971 (1974).) Section 317(c) requires each licensee to "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section."

6. Based upon these requirements of section 317 of the Act, the Commission's rules require broadcasters (section 73.1212) and cable operators (section 76.1615), where appropriate, to inform their audience, at the time of airing: (1) That such matter is sponsored, paid for or furnished, either in whole or in part; and (2) by whom or on whose behalf such consideration was supplied. The announcement must fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other incorporated group, or other entity by whom or on whose behalf such payment is made or promised, or services or other valuable consideration is received, or by whom the material or services received by the licensee or operator are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station or cable system on behalf of another, and that fact is known or, by the exercise of reasonable diligence could be known to the station or system, the announcement should disclose the identity of the person or persons or entity on whose behalf the agent is acting, rather than the agent. (47 CFR 73.1212(e), 76.1615(d).)

7. In situations in which a broadcast licensee has not directly received or been promised consideration, has not received any section 507 report that material has been paid for from its employees or others that must make such reports pursuant to that section of the Act, and, acting with the requisite diligence, has no information concerning the making of such promise or payment, section 317(a)(1) of the Act provides generally that no sponsorship identification is necessary with regard to material that is furnished to the licensee "without charge or at a nominal charge."

Political and Controversial Issue Programming

8. The sponsorship identification rules impose upon broadcast licensees and cable operators a greater obligation of disclosure in connection with

political material and program matter dealing with controversial issues. The Commission has noted that, particularly in the case of such programming, audience members are "entitled to know when the program ends and the advertisement begins." (Richard Kielbowicz and Linda Lawson, "Unmasking Hidden Commercials in Broadcasting: Origins of the Sponsorship Identification Regulations, 1927-1963," Fed. Comm. L.J. 329 at 344 n. 80 (2004) citing FCC, Public Service Responsibility of Broadcast Licensees 47 (1946).) Congress has acknowledged the danger that groups advocating ideas or promoting candidates, rather than consumer goods, might be particularly inclined to attempt to mask their sponsorship in order to increase the apparent credibility of their messages. (56 Fed. Comm. L.J. at 338.) Thus, deviating from the general rule contained in section 317(a)(1) that no sponsorship identification announcement is necessary if material is provided to a station free or at a nominal charge, section 317(a)(2) of the Act enables the Commission to require such an announcement regarding material so provided, if the programming involves political material or the discussion of a controversial issue.

9. Consistent with this statutory provision, both the broadcast rule (section 73.1212(d)) and the cable rule (section 76.1615(c)) expressly require the airing of sponsorship disclosure in such situations. In contrast to the general disclosure requirement that a single announcement be made at the time of airing of the material, for political or controversial programming of more than five minutes' duration, the announcements must be made both at the beginning and the conclusion of the airing of the material. (47 CFR 73.1212(d), 76.1615(c). For political or controversial programming that is five minutes or less in duration, only one announcement must be made, at the beginning or the end of the material. *Id.*) Moreover, if a corporation, committee, association or other unincorporated group or other entity is paying for or furnishing the broadcast matter, the station must include, for public inspection at the location of its public file (47 CFR 73.3526, 73.3527), a list of the chief executive officers or members of the executive committee or of the board of directors of such corporation, committee, association, other unincorporated group or other entity. (47 CFR 73.1212(e).)

Request for Comments

10. In addition to reminding broadcast licensees, cable operators, and others, pursuant to this *PN*, of their respective disclosure responsibilities under the Commission's sponsorship identification rules, the Commission seeks comment on VNRs and their use by broadcast licensees and cable operators. With this more detailed information, we will be better positioned to monitor this area and ensure that broadcast licensees, cable operators and others comply with our rules. To this end, we seek comment on the ways in which VNRs are used in programming, and on which practices are the most common. For example, we also seek comment on whether the entities producing or providing VNRs, including the government, pay broadcast licensees and cable operators to air VNRs, or whether the VNRs are provided free of charge, without separate payment or consideration. Are mechanisms in place to ensure that broadcast licensees and cable operators receive notice regarding the payment of consideration from all individuals and entities that are involved in the production and provision of VNRs? Are mechanisms in place to ensure that broadcast licensees and cable operators receive notice regarding the identity of entities providing programming involving political material or the discussion of controversial issues of public importance? Do broadcast licensees and cable operators receive VNRs as part of an overall news service, which may be provided under contract or on a subscription basis? If so, should this affect the applicability of our sponsorship identification rules? Finally, we seek comment on whether there are alternative or better means of ensuring proper disclosure concerning VNRs in addition to those prescribed by the existing rules. The Commission intends to issue a report, or initiate a more formal proceeding, as appropriate, on the comments received in response to these questions about VNRs forthwith. Although we seek comment on the use of VNRs in this Notice, we emphasize that the rules remain in effect and that we will continue to investigate complaints and enforce the rules during the pendency of this proceeding.

Conclusion

11. In sum, the Commission acknowledges the critical role that broadcast licensees and cable operators play in providing information to the audiences that they serve. This information is an important component

of a well-functioning democracy. Along with this role comes the responsibility that licensees and operators make the sponsorship announcements required by the foregoing rules and obtain the information from all pertinent individuals necessary for them to do so. We remind all such licensees and operators, as well as those involved in the production and provision of the material that they air, that they must strictly adhere to the foregoing requirements and to fully meet their responsibilities under them.

12. The Commission will investigate any situation in which it appears that these requirements of the law may have been violated and will order administrative sanctions against its regulatees, including the imposition of monetary forfeitures and the initiation of license revocation proceedings, where such action is appropriate. In addition to these sanctions that the Commission may impose, we note that the criminal penalty for violation of the disclosure requirements of section 507 of the Act is a fine of up to \$10,000, imprisonment of not more than a year, or both. (47 CFR 508(g).)

Procedural Matters

13. *Ex Parte Rules.* There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

14. *Comments Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample

form and directions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY). Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 05-9105 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Media Security and Reliability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting of Media Security and Reliability Council.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons that the Advisory Committee, The Media Security and Reliability Council (MSRC) will be holding its semiannual meeting at the Federal Communications Commission in Washington, DC.

DATES: June 2, 2005 at 10 a.m. to 11:30 a.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW-C305, 445 12th St. SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Barbara Kreisman, Designated Federal Officer of MSRC, 445 12th St. SW., Washington, DC 20554; telephone (202) 418-1600, e-mail Barbara.Kreisman@fcc.gov.

Press Contact, Meribeth McCarrick, Office of Media Relations, 202-418-0654, meribeth.mccarrick@fcc.gov.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together the leaders of United States mass media companies, cable television and satellite service providers, trade associations, public safety representatives, manufacturers and other related entities. MSRC II is chaired by David J. Barrett, President and Chief Executive Officer of Hearst-Argyle Television, Inc. MSRC was formed following the events of September 11, 2001, in order to study, develop and report on best practices designed to assure the optimal reliability, robustness and security of the broadcast and multichannel video programming distribution industries.

The agenda for the meeting is as follows: The Council will review progress reports of its two working groups: The Toolkit Development Working Group and the Local Coordination Working Group. Information concerning the activities of MSRC can be reviewed at www.fcc.gov/MSRC. Material relevant to the June 2 meeting will be posted there.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. A live RealAudio feed will be available over the Internet; information on how to tune in can be found at the Commission's Web site www.fcc.gov. The public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 05-9410 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 05-1153]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 6, 2005, the Commission released a public notice announcing the May 17, 2005 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Tuesday, May 17, 2005, 9:30 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5-A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT:

Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418-1466 or Deborah.Blue@fcc.gov. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: Released: May 6, 2005.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, May 17, 2005, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW-C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Tuesday, May 17, 2005, 9:30 a.m.*

1. Announcements and Recent News.

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

2. Approval of Minutes.
—Meeting of March 15, 2005.
 3. Report of the North American Numbering Plan Administrator (NANPA).
 4. Report of National Thousands Block Pooling Administrator.
 5. Report of NAPM, LLC.
 6. Status of Industry Numbering Committee (INC) activities.
 7. Report from NANP B&C Agent.
 8. Report of the Billing & Collection Oversight Working Group (B&CWG).
 9. Reports from Issues Management Groups (IMGs).
—Safety Valve IMG.
—SNAC Guidelines IMG.
—NANC Primer IMG.
 10. Report of Local Number Portability Administration (LNP) Working Group.
 11. Report of Numbering Oversight Working Group (NOWG).
 12. Report of Future of Numbering Working Group.
 13. Special presentations.
 14. Update List of NANC Accomplishments.
 15. Summary of action items.
 16. Public comments and participation (5 minutes per speaker).
 17. Other business.
- Adjourn no later than 5 p.m.
Next Meeting: Tuesday, July 19, 2005.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 05-9492 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2706]

Petitions for Reconsideration of Action in Rulemaking Proceedings

May 3, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY-B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160). Oppositions to these petitions must be filed by May 26, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules (CS Docket No. 98-120).

Number of Petitions Filed: 5.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-9409 Filed 5-10-05; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202-523-5793 or via e-mail at tradeanalysis@fmc.gov. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010714-038.

Title: Trans-Atlantic American Flag Liner Operators Agreement.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; Farrell Lines Incorporated; CP Ships (USA) LLC; and P&O Nedlloyd Limited.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005.

Synopsis: The amendment changes the name of Lykes Lines Ltd. LLC to CP Ships (USA) LLC.

Agreement No.: 011660-004.

Title: Administrative Housekeeping Agreement.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carriers, LLC; and Farrell Lines Incorporated; CP Ships (USA) LLC and P&O Nedlloyd Limited.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005.

Synopsis: The amendment changes the name of Lykes Lines Ltd, LLC to CP Ships (USA) LLC.

By Order of the Federal Maritime Commission.

Dated: May 6, 2005.

Bryant L VanBrakle,

Secretary.

[FR Doc. 05-9415 Filed 5-10-05; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

M & M Cargo Express, Corp., 338 NW. 12th Ave., Miami, FL 33128, Officer: Rommel M. Briceno, Corporate Officer (Qualifying Individual).

Masters Shipping, Inc., 10731 Sea Myrtle Drive, Houston, TX 77095, Officer: Luis Carranza, President (Qualifying Individual).

Maximo Martinez Inc., 66 Saint Peters Drive, Brentwood, NY 11717, Officer: Maximo Martinez, President (Qualifying Individual).

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Longron Corporation dba Time Logistics, 11728 Goldring Rd., #106, Arcadia, CA 91006, Officer: Chein Yun Chang, Officer (Qualifying Individual).

Explam Cargo, 9396 SW. 164 Court, Miami, FL 33196, Officer: Eyder A. Jimenez, President (Qualifying Individual).

International Alliance, Inc., 704 Magna Drive, Round Lake, IL 60073, Officers: Yelena Farber, Corporate Officer (Qualifying Individual), Yaroslav Farber, President.

American World Alliance, Inc., 3744 Industry Avenue, Suite 404, Lakewood, CA 90712, Officers: Rosemary Fletcher, Vice President (Qualifying Individual), R. Joseph Decker, Director.

Tarraf Inc., 21139 W 7 Mile Road, Detroit, MI 48219, Officers: Mohamad Tarraf, President (Qualifying Individual), Itaf A. Tarraf, Secretary.

Chumarks International Co., 5317 Church Avenue, 2nd Floor,

Brooklyn, NY 11203, Chukwuma Imo Oka, Sole Proprietor.

Universal Transpacific Carrier, Inc., 114 Seaview Drive, Secaucus, NJ 07094, Officers: Timothy T. Murphy, Vice President of Sales (Qualifying Individual) Brian Posthumus, President.

The Padded Wagon Inc. dba Padded Wagon, 163 Exterior Street, Bronx, NY 10451, Officer: Edmond Dowling, Owner (Qualifying Individual).

De Well Container Shipping, Inc., 17800 Castleton Street, Suite 208, City of Industry, CA 91748, Officers: Zhen Huan Xiao, Vice President (Qualifying Individual), Yang Shi, President.

Allport (USA), Inc., 144 E. Javelin Street, Carson, CA 90745, Officer: Diadema Tajiri, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Fermar Forwarding, L.L.C., 5565 SW. 2nd Street, Miami, FL 33134, Officer: Maria A. Fernandez, Member (Qualifying Individual).

U & S Shipping, Inc., 2610 Little Hill Cove, Unit 106, Oviedo, FL 32765, Officers: Mohammed A. Haseeb, President (Qualifying Individual), Zikra Mohsin, Treasurer.

Mtek International, 26888 Arcadia Drive, Flat Rock, MI 48143, Guomei Ma, Sole Proprietor.

ATC Cargo Inc., 8851 NW. 102nd Street, Medley, FL 33178, Officer: Luciano Campos, President (Qualifying Individual).

Bonado Direct Inc., 104-10 37th Avenue, Corona, NY 11368, Officers: Rafael Céspedes, President (Qualifying Individual), Jose C. Batista, Treasurer.

Pacific Crating and Shipping LLC, 1088 Revere Avenue, San Francisco, CA 94124, Officers: Arturo J. Pena, General Manager (Qualifying Individual), Luis A. Alvarado, Operations Manager.

Dated: May 6, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05-9414 Filed 5-10-05; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. The Willits Family Partnership, Malvern, Pennsylvania and its general partner, the Willits Family Trust, Malvern Pennsylvania, and its trustees Barbara Willits Shipp, Lydia Willits Bartholomew, William L.W. Shipp and Jamie Bartholomew, all of West Chester, Pennsylvania, to acquire voting shares of Malvern Bank Corporation, Malvern, Pennsylvania, and thereby indirectly acquire National Bank of Malvern, Malvern, Pennsylvania.

Board of Governors of the Federal Reserve System, May 5, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-9352 Filed 5-10-05; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Capital One Financial Corporation*, McLean, Virginia; to merge with Hibernia Corporation, New Orleans, Louisiana, and thereby indirectly acquire Hibernia National Bank, New Orleans, Louisiana.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *First Community Holding Company*, Hammond, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank, Hammond, Louisiana.

Board of Governors of the Federal Reserve System, May 4, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-9350 Filed 5-10-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. *Neighborhood Bank Corporation*, Palatka, Florida, to become a bank holding company by acquiring Putnam State Bank, Palatka, Florida.

Board of Governors of the Federal Reserve System, May 5, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-9351 Filed 5-10-05; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m.(EDT), May 16, 2005.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public:

1. Approval of the minutes of the April 18, 2005, Board member meeting.
2. Presentation by Barclays Global Investors.
3. Presentation by Metropolitan Life.
4. Thrift Savings Plan activity report by the Executive Director.

Parts Closed to the Public:

5. Procurement.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: May 9, 2005.

Thomas K. Emswiler,

Associate General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 05-9541 Filed 5-9-05; 3:14 pm]

BILLING CODE 6760-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Applied Research for Populations Around Hazardous Waste Sites

Announcement Type: New.

Funding Opportunity Number: RFA TS05-110.

Catalog of Federal Domestic

Assistance Number: 93.161.

Key Dates: Letter of Intent Deadline: June 10, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: This program is authorized in sections 104(i) (1)(E), (7), (9), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)(1)(E), (7), (9), and (15)].

Background

Agency for Toxic Substances and Disease Registry (ATSDR) has the responsibility under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, to evaluate the relationship between exposures to hazardous substances and adverse human health effects. However, this relationship between exposures to hazardous substances and adverse health effects is complicated and difficult to evaluate. Many factors can generate the appearance or hide the presence of a relationship between exposure to hazardous substances and adverse health effects. The presence of environmental contamination and an adverse health effect does not automatically demonstrate evidence of a causal relationship. Beginning in 1992, ATSDR developed a research agenda to address some of these questions. Research under this agenda continues to be conducted, but additional research is needed. Therefore, projects conducted under this program announcement will focus on those questions that have the greatest relevance toward determining the relationship of adverse health effects among persons exposed to hazardous substances.

Examples of relevant ATSDR activities are presented below:

Evaluation of Persons Exposed to Tremolite Asbestos Contaminated Vermiculite

Asbestos contaminated vermiculite ore was mined and processed in Libby, Montana, from the early 1920s until 1990. ATSDR has completed a medical screening program, a mortality review and a Public Health assessment in Libby. Based on these studies and additional evaluation conducted by ATSDR, EPA and the State of Montana, people who worked in the Libby mine or processing facilities and people who lived in the Libby community were exposed to asbestos-contaminated vermiculite. Nearly eighteen percent of medical screening participants had radiographic pleural abnormalities consistent with asbestos exposure. Mortality due to lung cancer and asbestosis was also found to be elevated in Libby. ATSDR has also implemented a Tremolite Asbestos Registry (TAR) of exposed persons and has funded the State of Montana to conduct additional periodic medical surveillance for eligible persons.

Additionally, records indicate that the vermiculite ore from Libby was shipped to over 200 locations around the U.S. for handling and/or processing into various commercial and consumer products. Twenty-eight "Phase 1 Sites" have been identified based on a variety of factors such as tonnage of ore received, population density, numbers of workers, etc. Health statistics reviews (to evaluate mortality and cancer registry data) are currently being completed in sixteen states and mesothelioma surveillance has been initiated in three states (New York, Wisconsin and New Jersey). In addition, ATSDR has funded a comprehensive community exposure assessment project in a community receiving the ore. This work addresses the priority health conditions of lung and respiratory disease.

Exposure to Contaminants From Collapse of World Trade Center Towers on September 11, 2001

The World Trade Center Health Registry is a joint effort of ATSDR and the New York City Department of Health and Mental Hygiene (NYCDOHMH). It was designed to track the health of people who were most directly exposed to the disaster on September 11, 2001 and in the months that followed. Registrants will be followed to attempt to determine if their exposure to smoke, dust, and airborne substances from the collapse of the towers and subsequent fires has a long term impact on their health. Questions regarding their physical and mental health were asked

in a structured interview of approximately 30 minutes. Data collection was completed over approximately 15 months and over 71,000 people enrolled in the registry. Environmental monitoring information indicates that possible exposure to asbestos, particulate matter, manmade vitreous fibers, silica, Polycyclic Aromatic Hydrocarbons (PAHs), and other caustic material may have occurred. Several of these materials are associated with short- and long-term health effects. Some preliminary follow-up studies of people in lower Manhattan have found some associations between those exposures and respiratory health problems. Additional research is needed to better clarify the exposure and dose relationship. In addition, research is needed to determine the possible future occurrence of adverse health effects. This work addresses the priority health conditions of lung and respiratory disease.

Purpose: The purpose of this program is to fill gaps in knowledge by conducting applied research studies related to human exposure to hazardous substances at hazardous waste sites and adverse health outcomes, including health outcomes as prioritized by ATSDR. This program addresses the "Healthy People 2010" focus areas of Environmental Health and Public Health Infrastructure.

Measurable outcomes of the program will be in alignment with the following performance goal for the ATSDR:

- Determine human health effects associated with exposures from hazardous waste sites to Superfund-related priority hazardous substances.

Hazardous substances, as applies to this announcement, are those as defined by the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA).

The list of priority hazardous substances found at CERCLA sites can be found at <http://www.atsdr.cdc.gov/clist.html>.

Research Objectives: Studies may be conducted in the following areas:

- Identification, validation, and development of biomarkers of exposure, susceptibility, and effect;
- Further evaluation of the link or lack of linkage between specific chemicals and specific health effects and
- Development of research projects to further investigate outcomes found in data previously collected by ATSDR or its grantees.

Activities: Awardee activities for this program are as follows:

Applications must propose studies which will address one or more of the

following ATSDR Priority Health Conditions: (in alphabetic order)

- Birth defects and reproductive disorders;
- Cancers (selected anatomic sites);
- Immune function disorders;
- Kidney dysfunction;
- Liver dysfunction;
- Lung and respiratory diseases; and
- Neurotoxic disorders.

Applicants must propose studies/projects in one or more of any of the following areas of investigation:

- Identify risk factors for adverse health effects in populations that have either potential or known exposures to hazardous substances (as defined by CERCLA) from hazardous waste sites and releases.
- Evaluate potentially impacted populations exposed to the events of the collapse of the World Trade Center Towers on 9/11 and/or exposed to ore from the Libby, MT mine to identify linkages between exposure and adverse health effects and those risk factors which may be impacted by prevention actions. See summaries of these ATSDR activities under the Background section of this RFA.

- Develop methods to identify adverse health effects in populations that are potentially exposed to hazardous substances from hazardous waste sites in their environment. This includes medical research to evaluate currently available biological tests (biomarkers) and disease occurrence in potentially impacted populations such as individuals exposed to vermiculite contaminated with asbestos from the Libby, MT mine. See summary of this ATSDR activity under the Background section of this RFA.

- Disseminate research findings upon satisfactory completion of peer and public review. Findings should be disseminated through presentations at scientific meetings, participation in stakeholder or state sponsored meetings, and/or journal publications.

II. Award Information

Type of Award: Grant.

Mechanism of Support: R01.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$500,000. (This amount is an estimate, and is subject to availability of funds.)
Approximate Number of Awards: One.

Approximate Average Award: \$500,000. (This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: \$500,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 Months.

Project Period Length: Three (3) Years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Assistance will be provided only to state supported United States Schools of Public Health who are currently accredited by the Council on Education of Public Health that are associated with or have access to programs in environmental epidemiology, environmental sciences, clinical medicine, and medical informatics. Applicants must affirmatively establish that they meet their respective State's legislative definition of a State entity or political subdivision to be considered an eligible applicant. Eligibility is limited to these applicants because they provide (1) the technical expertise in the wide range of disciplines needed to further develop the theoretical and scientific base necessary for this research and to develop and test for new methodology essential to support state and local programs; and (2) a training ground for the nation's future environmental public health workforce. This range of disciplines and expertise is often unavailable or difficult to access by state or local public health agencies.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- **Note:** Title 2 of the United States Code Section 1611 states that an

organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925-0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: <http://grants.nih.gov/grants/funding/phs398/phs398.html>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unspaced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Announcement

Application: Follow the PHS 398 application instructions for content and

formatting of your application. For further assistance with the PHS 398 application form, contact PGO-TIM staff at 770-488-2700, or contact GrantsInfo, Telephone (301) 435-0714, E-mail: GrantsInfo@nih.gov.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access www.dunandbradstreet.com or call 1-866-705-5711. For more information, see the CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcomm.htm>.

This announcement uses the modular budgeting as well as non-modular budgeting formats. See: <http://grants.nih.gov/grants/funding/modular/modular.htm> for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of \$250,000 or less, use the modular budget format.

Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 10, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines:

Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural

disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question about your application, contact the PGO-TIM staff at: 770-488-2700. If you still have a question about your LOI, contact OPHR staff at: 404-371-5253. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: <http://www.whitehouse.gov/omb/grants/spoc.html>.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.
- Funds may not be used for projects in the area of asthma-related research.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, Mailstop D-72, Decatur, GA 30030. Telephone Number: 404-371-5277. Fax: 404-371-5215. E-mail address: Mlerchen@cdc.gov.

Application Submission Address: Submit the original and one copy of your application by mail or express delivery service to: Technical Information Management-RFA TS05-110, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the applications, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, Mailstop D-72, Decatur, GA 30030.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC/ATSDR supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work

that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? The study should include the rationale for selecting a community and population to be the subject of the proposed investigation and the relevance to exposures to hazardous substances at hazardous waste sites and adverse health outcomes.

Approach: Does the applicant provide a sound rationale for the specific approach and scientific method to conduct the study? Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Is there (a) an adequate rationale for the design of the proposed study; (b) identification of a target (exposed/diseased) population; (c) identification of an appropriate comparison group (if warranted); (d) consideration of sample size; (e) a plan for linking environmental exposure to hazardous substances and health outcome data; and (f) detailed plan for analysis of the data included.

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed studies take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of adequate institutional support? Are there letters of support, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of

women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the Office of Public Health Research. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by ATSDR in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review conducted by the Scientific Program Administrator in the Office of the Associate Director for Science.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

The anticipated award date will be on or before August 31, 2005.

VI. Award Administration Information**VI.1. Award Notices**

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-1 Human Subjects Requirements
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR-7 Executive Order 12372
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-14 Accounting System Requirements
- AR-17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
- AR-18 Cost Recovery—ATSDR
- AR-19 Third Party Agreements—ATSDR
- AR-22 Research Integrity

Additional information on these requirements can be found on the CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

VI.3. Reporting

You must provide ATSDR with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925-0001, rev. 9/2004 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

- a. Progress toward Measures of Effectiveness.

- b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period. Final performance reports should include a scientific report that summarizes the complete project, the analyses and the final results, and/or a manuscript suitable for publication in a peer review journal. Additionally, the Program office requests that all data sets generated under this project be provided to ATSDR in electronic format.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770 488-2700.

For scientific/research issues, contact: Mildred Williams-Johnson, Ph.D., Scientific Program Administrator, CDC/ATSDR, 1600 Clifton Road, NE, MailStop E17, Atlanta, GA 30333. Telephone: 404 498-0639. E-mail: MWilliams-Johnson@cdc.gov; or Sharon Campolucci, RN, MSN, Scientific Collaborator, CDC/ATSDR, 1600 Clifton Road, NE, MailStop E31, Atlanta, GA 30333. Telephone: 404-498-0105. E-mail: ssc1@cdc.gov.

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, Mailstop D-72, Atlanta, GA 30030. Telephone: 404-498-5277. E-mail: MLerchen@cdc.gov.

For financial, grants management, or budget assistance, contact: Edna Green, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770 488-2743. E-mail: egreen@cdc.gov.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: <http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 5, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*
[FR Doc. 05-9373 Filed 5-10-05; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[Program Announcement EH05-056]

An Assessment of the Health Effects From Exposure to Volcanic Emissions; Notice of Intent To Fund Single Eligibility Award**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a grant program to: to provide funds to the Hawaii Department of Public Health (HDPH) for an assessment of the health effects experienced by Hawaii residents that may be associated with potentially toxic volcanic emissions from an active volcano.

B. Eligible Applicant

An application may only be submitted by the Hawaii Department of Public Health (HDPH).

HDPH is the most appropriate organization to conduct the work under this grant for the following reasons:

1. Congressional language states that: The problem of asthma in Hawaii remains a serious health threat and challenge, especially among the medically underserved. In particular, the problem of volcanic emissions in Hawaii contributes to this and other respiratory problems. Congress has provided CDC with funds to address this problem.

2. Hawaii has the statutory responsibility for protecting and enhancing the public health of its citizens. This includes assessing the impact of volcanic emissions on the health of Hawaii residents.

3. HDPH has access to state collected data, which will be essential components of the project.

C. Funding

Approximately \$75,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 2005, and will be made for a 12-month budget period within a project period of up to 1 year. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341-4146. Telephone: 770-488-2700.

For technical questions about this program, contact: Mildred Williams-Johnson, Ph.D., Scientific Program Administrator, CDC, National Center for Environmental Health, 1600 Clifton Road, NE., Mail Stop E17, Atlanta, GA 30333. Telephone: 404-498-0639. E-mail: MWilliams-Johnson@cdc.gov.

Dated: May 5, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*
[FR Doc. 05-9368 Filed 5-10-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reducing Racial and Ethnic Disparities in Childhood Immunization

Announcement Type: New.

Funding Opportunity Number: RFA IP05-087.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline: June 10, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.

Background

Eliminating health disparities among racial and ethnic populations in the United States is a major public health goal. However, in recent years, disparities in immunization rates between black and white children have been increasing (Chu *et al.*)¹. Therefore, the National Immunization Program (NIP) is seeking to support projects that may lead to reductions in these disparities.

Factors that may be related to lower immunization rates among black children include frequency and timing of well child visits, provider type (pediatrician, family practitioner, public

health clinic (PHC)), missed opportunities for immunization, socioeconomic status (SES), urban vs. rural vs. suburban settings, and parental beliefs. Missed opportunities are medical encounters during which a child fails to receive an immunization for which he/she is eligible and they have been shown to contribute to under immunization of children. The National Maternal and Infant Health Survey showed that black children were less likely than white children to receive the recommended number of well child visits and immunizations in the first seven months of life. SES has been shown to impact immunization coverage levels in many studies. Some studies have found that adjustment for SES and access to care did not completely explain racial and ethnic disparities.

Purpose

The purpose of the program is to fund a community-based demonstration project to identify, implement and evaluate interventions that will result in a statistically significant reduction in racial disparities in immunization coverage levels between black children 19-35 months of age and children of other races, particularly white children, as evidenced by a comparison of immunization coverage of black and other racial/ethnic groups before and after interventions are implemented. Throughout this announcement black refers to non-Hispanic black and white refers to non-Hispanic white. These interventions must include: (1) Enhancement of healthcare utilization and (2) strategies to reduce missed opportunities for immunization. The key to the success of this program will be community-focused programs that include the full engagement of appropriate partners. These partners may include faith-communities, health care purchasers, health plans, health care providers, and many other community sectors working together. The focus of this announcement is for medium or large urban areas with populations of at least 100,000 people. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Center for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases and will be evidenced by a significant increase in immunization coverage levels among black children in the study communities before and after implementation of

study interventions. A significant increase is defined as 90 percent confidence in having achieved an increase in coverage among black children of at least five percentage points with no increase in disparities.

Research Objectives

1. Identify factors related to disparities in childhood immunization rates between black children and children of other racial/ethnic groups within an urban area. These factors must include community and practice level factors related to utilization of health services and practice level factors related to missed opportunities for immunization.

2. Develop and implement interventions to address factors related to disparities in immunization rates between black children and children of other racial/ethnic groups. The applicant must address community and practice level factors related to enhancing utilization of health services and practice level factors related to missed opportunities for immunization.

3. Evaluate the effectiveness of these interventions in decreasing racial disparity in immunization rates between blacks and all other children within the urban area.

Activities

Awardee activities for this program are as follows:

1. Select a medium or large urban area with a total population of at least 100,000 people, with documented significant racial/ethnic disparities in childhood immunization rates. At least 25 percent of this urban area should be black.

2. Develop and implement plans to identify factors which are related to the disparity differences in immunization coverage between black children and children of other racial/ethnic groups in this urban area. These factors must include community and practice level factors related to utilization of health services and practice level factors related to missed opportunities for immunization. Examples include number and timing of well child visits, pattern of missed opportunities, SES status, provider type (family practitioner, pediatrician, PHC), and availability of social services and transportation within the urban area.

3. Design interventions for addressing the factors related to disparities in immunization coverage in this urban area. These interventions must address community and practice level factors related to enhancing utilization of health services and practice level factors related to missed opportunities for

¹ Chu S, Barker L, Smith P. "Racial and ethnic disparities in preschool immunizations: United States, 1996-2001". "American Journal of Public Health". 2004; 94:973-977.

immunization. Interventions also need to involve collaboration between the community and practice-based activities, as well as, a plan for sustainability of these activities. Programs are expected to employ multiple strategies, including innovative strategies as well as evidence-based public health strategies based at least partially on the existing and emerging research base and careful scientific review such as the Guide to Community Preventive Services (<http://www.thecommunityguide.org/>).

Effective public health strategies may include changes to the social and physical environments; health promotion, public education, and information; media and other communication strategies; technological advances; economic incentives and disincentives; system improvements; provider education and medical office-based improvement strategies. While they may be included, mass media campaigns should not constitute the sole intervention aimed at the community. While project activities should reach all persons in an identified intervention area, special efforts should be taken to ensure focus on black populations experiencing disparities in access to and use of preventive services.

Because sustainability is important, the program must include a plan for sustaining interventions past the funding period.

Programs must be culturally competent, and meet the health literacy and linguistic needs of target populations in the intervention area.

Programs could optimize resources by coordinating and partnering with existing programs and resources in the community, surrounding areas, and the state.

Collaborative partnerships with, for example, professional organizations; health care providers, employers, purchasers, and health plans; faith-based organizations; schools; child care, early childhood programs, Women, Infants, and Children (WIC) program, and other organizations that serve children; and many others are key to reaching affected populations and delivering and sustaining effective programs. Strong, cooperative linkages between clinical preventive care and community public health should be established and maintained.

4. Implement interventions within multiple immunization provider practices. At a minimum, a representative sample of at least 30 practices in the urban area should participate in the intervention and be evaluated. This sample should be representative of where blacks receive

care and of where whites receive care in a geographically defined area (city or region) where blacks account for at least 25 percent of the population. Each sample must include a sufficient number of clinics for meaningful comparisons to be made. Because disparities persist across socioeconomic categories, it is important that clinics that serve patients of higher SES be represented as well as clinics serving patients of lower SES.

5. Validate or document degree of implementation of interventions, including number of persons reached by, and use of intervention strategies; tracking the accomplishment of activities and the achievement of short-term and intermediate outcomes; monitoring changes in health outcomes; and using program evaluation findings to adjust plans and strengthen the program. This would involve identification and collection of appropriate process measures through multiple means and would also involve direct observation of practices.

6. Determine effectiveness of interventions by comparing immunization rates between black children and children of racial/ethnic groups within and between practice sites. The evaluation must include a comparison of immunization coverage of black and other racial/ethnic groups before and after interventions are implemented. In addition, if available, population-based measures (cluster surveys or random digit dial telephone surveys) can also be used to monitor coverage rates.

7. Identify the most effective, feasible, and sustainable interventions in reducing disparities in immunization rates in this urban area.

8. Collaboratively disseminate research findings in peer reviewed publications and for use in determining national policy.

Because sustainability is important and the program included a plan for sustaining interventions, we encourage measures of progress past the project period.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).

2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.

3. Provide technical assistance on the selection and evaluation of data collection and data collection instruments.

4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol or will defer to outside IRB, and will do so on at least an annual basis until the research project is completed.

5. Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.

6. Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.

7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.

8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$300,000 (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: \$300,000 (Includes direct and indirect costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: \$300,000 (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: Three (3) years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such

as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.)

- Public nonprofit organizations.
- Private nonprofit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their

Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

• Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

• **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section

501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925-0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: <http://grants.nih.gov/grants/funding/phs398/phs398.html>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2.
- Font size: 12-point un-reduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Announcement.

Application: Follow the PHS 398 application instructions for content and

formatting of your application. For further assistance with the PHS 398 application form, contact PGO-TIM staff at 770-488-2700, or contact GrantsInfo, Telephone (301) 435-0714, E-mail: GrantsInfo@nih.gov.

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711.

For more information, see the CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcomm1.htm>.

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 10, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you submit your LOI and Application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the

submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404-371-5277. If you still have a question concerning your application, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for State and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: <http://www.whitehouse.gov/omb/grants/spoc.html>.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72, Telephone: 404-371-5277, Fax:

404-371-5215; E-mail:

MLerchen@cdc.gov.

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—RFA IP05-087, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72, Telephone: 404-371-5277, Fax: 404-371-5215, E-mail: MLerchen@cdc.gov.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Are disparities in immunization rates documented and significant?

Applicants must document the targeted community has statistically significant disparities in immunization rates between black and children of other racial/ethnic groups for children 19-35 months of age. Documentation of population should be placed behind the application face page.

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Preference will be given to communities with greater disparities in immunization rates as evidenced by National Immunization Survey data or other indicators. These communities are frequently located in the Northeastern United States.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate

representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.

- Undergo a peer review by a Special Emphasis Panel (SEP). The SEP will be selected from the National Institutes of Health (NIH) pool of scientists or recommendations from the NIP to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

- Disparities in immunization rates.

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail from the Scientific Review Administrator.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-1 Human Subjects Requirements.
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR-7 Executive Order 12372.
- AR-10 Smoke-Free Workplace Requirements.
- AR-11 Healthy People 2010.
- AR-12 Lobbying Restrictions.
- AR-15 Proof of Non-Profit Status.
- AR-22 Research Integrity.
- AR-24 Health Insurance Portability and Accountability Act Requirements.

- AR-25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925-0001, rev. 9/2004 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must

contain the following additional elements:

- a. Progress Toward Measures of Effectiveness.

- b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: (770) 488-2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, National Immunization Program, MS E-05, 1600 Clifton Road NE., Atlanta, GA 30333, Telephone: (404) 639-8727; E-mail: SChu@cdc.gov.

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72, Telephone: 404-371-5277, Fax: 404-371-5215; E-mail: MLerchen@cdc.gov.

For financial, grants management, or budget assistance, contact: Peaches Brown, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488-2738; E-mail: POBrown@cdc.gov.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: <http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 5, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*
[FR Doc. 05-9364 Filed 5-10-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhancing Utilization of Childhood Immunization Client Recall Practices by Private Providers

Announcement Type: New.

Funding Opportunity Number: RFA IP05-088.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline: June 10, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317 (k)(1) [42 U.S.C. 247b (k)(1)] of the Public Health Service Act, as amended.

Background

Client recall interventions have been strongly recommended by the Task Force of Community Preventive Services as a strategy to increase vaccination coverage among infants and young children who have missed one or more of vaccinations ("Am J Prev Med 2000"; 18 (1S), 97-140). The Task Force has recommended this practice in a range of settings and populations and a range of scales (from individual practice settings to entire communities), either in isolation or as part of a multifaceted program. In addition, studies have been implemented in a range of settings, including academic clinical practice, public health settings, managed care, private practice, and community-wide settings.

However, immunization recall interventions have not been widely adopted by private practitioners. Nationally, fewer than 20 percent of private providers use a recall system ("Pediatrics 2003"; 112:1076-1082). Several barriers include lack of time and funding and the inability to identify children at specific ages. A strong predictor of current use of recall messages is having a key person (champion) to lead the recall effort. Anecdotal evidence suggests that practitioners might have difficulty identifying all age cohorts, but would be more willing to identify a cohort of children of a specified age. Data from the National Immunization Survey suggests that, by seven months, 46 percent of infants have fallen behind the recommended schedule, and by 16 months of age, 31 percent remain behind. These two milestones, increasing 7 and 16 months immunization rates, may represent

critical times when recall interventions could be productive.

Purpose

The purpose of the program is to increase the use of immunization recall office procedures among private practitioners who immunize children in a given community. Community is defined as a group of practitioners located within a geographic boundary. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases, specifically the "Healthy People 2010" Objective 14-22, which calls for achieving and maintaining effective vaccination coverage levels for universally recommended vaccines among young children, using a target goal of 90 percent up-to-date (UTD) immunization by 2010 for children 19-35 months old.

Measurable outcomes of the program will be in alignment with the performance goal for the Center for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objectives:

- Identify factors that facilitate or impede the use of a recall mechanism among private practitioners in a defined community;
- Develop a community-based program to overcome such barriers and enhance recall practices throughout the entire geographic community; and
- Test how effectively the program results in adoption of recall mechanisms by local private providers.

Activities

Definition: Community-based intervention is defined here as an intervention program provided to all primary care physicians (principally, pediatricians and family practice physicians) in the community. For example, a general education program provided to all such physicians in a community concerning the value of using a client recall program in their practice would qualify. On the other hand, a study involving pre-selection and enrollment of only certain local physicians, followed by an intervention provided only to them, even if designed to provide them with skills or materials suitable to achieve the outcome desired, would not qualify.

Awardee activities for this program are as follows:

1. Identify two geographic communities in which relatively few primary care providers (suggested range, 10-30 percent of practices) use client recall procedures to notify and schedule

children in their practice to return for an immunization office visit. One community will serve as the intervention community, the other as the control. The control community should be demographically similar to the intervention community, but will not be exposed to the intervention. The control and intervention communities must be evaluated at the same time intervals and in the same manner during the study.

2. In both communities, determine the knowledge, attitudes, and practices of local private providers and their staff concerning the use of client recall procedures in their office practices.

3. Develop or use existing relationships with university faculty, state and/or local health department personnel, and an immunization coalition to conduct this study. The participation of each of these three groups should be active and substantial. University faculty should be qualified and interested in conducting program evaluation research.

4. Develop (or use an existing) coalition (or alternatively, a partnership, task force, or advisory board) to periodically monitor and provide timely feedback on all programmatic activities. If such a coalition does not presently exist, the applicant must describe how either a broad-based coalition or advisory board will be developed during the first six months. Members should include physicians and nurses who treat children, health educators, and pharmacists; officials from government health departments and social services; administrative representatives from health care organizations, licensed child care centers, health maintenance organizations, insurers, and hospitals; and interested parents, business, and community leaders.

5. Within the intervention community, identify practice-based or physician-based barriers and facilitators to the establishment and/or on-going use of client recall procedures.

6. Use this information to create, develop, and administer a community-based intervention program, as defined above, that is designed to overcome identified barriers or optimize the use of facilitators to the adoption of client recall procedures. Such methods may include the use of education, non-cash incentives, and other, preferably novel methods. Program elements should be readily applicable to many types of practices, or alternatively, have the capacity to be easily tailored to each type of practice. The program may involve, for example, academic detailing, equipment purchase, train-the-trainer, management and training by

the state or local health department or local immunization coalition, incentives by a local professional organization, or other methods. Multifaceted incentive programs are generally preferred over those with only one feature.

7. Recall programs must, at a minimum, target under immunized children at two discrete ages, seven months and 16 months old. Special attention should be paid to children known to have lived at more than one address by their first birthday. At least six cycles should be conducted at each age; that is, each practice should conduct monthly recalls for seven-month-olds and 16 month-olds at least six times during the two-year grant period. Patient recall may be conducted using either mail, e-mail, or telephone methods, which may involve personal calls or auto-dialer techniques.

8. Justification should be shown to demonstrate that any motivators or (non-cash) reward system is low-cost and cost-efficient.

9. Assess the feasibility of providing the proposed intervention program to the entire community before its full institution.

10. Provide the program throughout the intervention community over two years.

11. Measure the actual cost of the intervention program from the provider's perspective.

12. Measure the degree to which the intervention is associated with adoption of recall procedures among all private practices in the intervention community, and compare this with any secular trends in adoption of recall procedures in the control community. Within those practices that conduct any client recall procedures, collect and report key process measures of these functions. For example, measure the number of telephone contacts made, proportion of mailed recall notices returned undeliverable, how many months the office used the recall process, changes in daily functions believed locally to support the continued use of recall, etc. The benchmark of success for this project will be the adoption and on-going use (at 24 months) of recall procedures by 20 percent more practices in the intervention above the corresponding measure in the control community by the end of the two-year period. Alternatively, for relatively populous geographic areas, adoption of recall procedures by at least 10 more practices in the intervention vs. the control community during this period will denote success.

13. At the end of the project period, document changes in vaccination

coverage, using 4:3:1:3:3:1 Up to Date (UTD) coverage rates as the standard. (For varicella, history of disease should be taken into account.) Additionally, measure changes in provider's knowledge, attitudes, and practices concerning infant and child immunization that have resulted from the program. All such results should be compared with corresponding findings in the control community.

14. Collaboratively disseminate research findings in peer-reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).
2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.
3. Provide technical assistance on site selection, data collection instruments, analysis, and evaluation methods.
4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.
5. Contribute subject matter expertise in the areas of epidemiologic and survey methods and statistical analysis.
6. Participate in the analysis and dissemination of information, data and findings from the project to facilitate dissemination of results.
7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.
8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: UO1.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$300,000. (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: \$300,000. (Includes direct and indirect

costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: \$300,000. (Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: Two (2) years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1)] of the Public Health Service Act, as amended.)

- Public nonprofit organizations.
- Private nonprofit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- Document in the Appendix that eligibility satisfies the criteria of Section III.1.

- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators: Any individual or institution with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925-0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: <http://grants.nih.gov/grants/funding/phs398/phs398.html>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and

Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI)

Your LOI must be written in the following format:

- Maximum number of pages: Three.
- Font size: 12-point un-reduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Announcement.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO-TIM staff at 770-488-2700, or contact GrantsInfo, Telephone (301) 435-0714, E-mail: GrantsInfo@nih.gov.

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access www.dunandbradstreet.com or call 1-866-705-5711.

For more information, see the CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcomm1.htm>.

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 10, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question concerning your LOI, contact the OPHR staff at 404-371-5277. If you still have a question concerning your application, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to

prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: <http://www.whitehouse.gov/omb/grants/spoc.html>.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and IRB approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72. Telephone: 404-371-5277. Fax: 404-371-5215. E-mail: MLerchen@cdc.gov.

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—RFA IP05-088, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72. Telephone: 404-371-5277. Fax: 404-371-5215. E-mail: MLerchen@cdc.gov.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. The benchmark of success for this project will be the adoption of recall procedures by 20 percent more practices in the intervention vs. the control community by the end of the two-year period. Alternatively, for relatively populous geographic areas, adoption of recall

procedures by at least 10 practices during this period will denote success. Other measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem in this community? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

The applicant must address the needs of a community containing at least 50 private provider offices of pediatricians, family practitioners, or doctors of osteopathy where childhood immunizations are given. A separate community of similar size and demographic composition should be used as a control group. In each, recall procedures should be currently in practice in relatively few such offices, preferably 10–30 percent. The application should document in the research plan the approximate number of provider offices and the proportion with recall procedures in place. The cohort of office practices should include relatively large (more than 10 immunizing physicians) as well as small practices with one or two immunizing physicians). If the target audience represents multiple private practices, such practices may not have a single, central administrative authority. No more than half the practices involved should be located in a central county

area; the other practices should then be located in one or more outlying counties of the core based statistical area (see <http://www.census.gov/population/www/estimates/aboutmetro.html> for definition of terms). Practices where no broad scale or comprehensive recall program has existed during the past 12 months are less likely to be subjected to confounding by other factors, and are therefore preferred.

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

If the proposed intervention involves direct communication with office practice staff, the applicant must include in the Appendix letters of support indicating agreement concerning their access to a variety of types of provider offices, or alternatively, note their experience in conducting on-site interventions in practitioner's offices and discuss ways they intend to overcome such barriers. The applicant should specify their progress to date in identifying both the intervention and control group of physicians/practices. The control group should be one not exposed to the program, yet evaluated at the same time intervals as the intervention group to control for secular changes in office practice procedures.

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Novel methods that induce system changes by providing non-cash incentives or removing disincentives should be considered.

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

The applicant must develop or use existing relationships with each of three groups—university faculty, state and/or local health department personnel, and an immunization coalition—to conduct this study. University faculty should have experience in conducting program evaluation research. The participation of each of these three groups should be active and substantial, and their agreement to participate documented in letters of support in the Appendix. The applicant should develop (or use an existing) coalition, partnership, task force, or advisory board to provide

timely feedback on all programmatic activities. If such a coalition does not presently exist, the applicant must describe how either a broad-based coalition or advisory board will be developed during the first six months. This coalition should consist of physicians and nurses who treat children, health educators, and pharmacists; officials from government health department and other key health and social services; administrative representatives from health care organizations, licensed child care centers, health maintenance organizations, insurers, and hospitals; and interested parents, business, and community leaders.

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

1. Degree to which the basis of selecting the intervention and control communities is described in the application.
2. Degree of support for the project expressed by immunization providers and key stakeholders in the intervention community.
3. Degree to which the intended program intervention is described, and any preliminary or pilot information that suggests the degree to which it might be effective in this community.
4. Ability of applicant to recruit immunization provider private practices for this or other similar interventions.
5. Degree to which activities are specific, measurable, and appropriately time-framed.
6. Extent to which applicant documents plan to sustain use of recall procedures in the community following the termination of this project.
7. To what extent is each component of the Special Requirements (see Section III.3) met?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Undergo a peer review by a Special Emphasis Panel (SEP). The SEP will be selected from the NIH pool of scientists or recommendations from the National Immunization Program to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of

the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-1 Human Subjects Requirements.
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR-7 Executive Order 12372.
- AR-10 Smoke-Free Workplace Requirements.
- AR-11 Healthy People 2010.
- AR-12 Lobbying Restrictions.
- AR-15 Proof of Non-Profit Status.
- AR-22 Research Integrity.
- AR-24 Health Insurance Portability and Accountability Act Requirements.
- AR-25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925-0001,

rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

a. Progress Toward Measures of Effectiveness.

b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, Centers for Disease Control and Prevention, National Immunization Program, MS E-05, 1600 Clifton Road NE, Atlanta, GA 30333. Telephone: (404) 639-8727. E-mail: SChu@cdc.gov.

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72, Telephone: 404-371-5277. Fax: 404-371-5215. E-mail: MLerchen@cdc.gov.

For financial, grants management, or budget assistance, contact: Sharron Orum, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: (770) 488-2716. E-mail: spo2@cdc.gov.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: <http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 5, 2005.

William P. Nichols,
Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.
[FR Doc. 05-9372 Filed 5-10-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Developing Methods and Strategies To Increase Use of Immunization Registries by Private Providers

Announcement Type: New.

Funding Opportunity Number: RFA IP05-096.

Catalog of Federal Domestic Assistance Number: 93.185.

Letter of Intent Deadline: June 10, 2005.

Application Deadline: June 27, 2005.

I. Funding Opportunity Description

Authority: Section 311 [42 U.S.C. 243] and 317 (k)(1) [42 U.S.C. 247b (k)(1)] of the Public Health Service Act, as amended.

Background

Immunization registries are confidential, computerized information systems that collect vaccination histories and help ensure correct and timely immunizations, especially for children. Even though the United States currently enjoys the highest immunization rates and lowest disease levels ever, the growing complexity of the childhood vaccination schedule, as well as the need to vaccinate a new birth cohort of four million infants each year, makes such recordkeeping imperative. Inaccurate vaccination histories could lead to unnecessary immunization or missed opportunities for immunization. Because about 20 percent of children see a second provider during the second year of life and the paper records from the first provider may not be available, there is some risk that toddlers may receive an unnecessary vaccination. This waste increases the cost of medical care and results in an unnecessary injection for the young child. On the other hand, if a provider who sees a child for some but not all immunizations relies on the parent's hand-held vaccination records, a missed opportunity for immunization may occur if the parent forgets to bring in the child's records. The provider may then either (1) remind the parent verbally at the time to bring in the record for review at the next visit, or (2) attempt to obtain all immunization records from other known immunization providers, a time-intensive function. Instead, by electronically combining such records, registries can reduce both the possibility of extra immunizations as well as missed opportunities, as well as enhance other aspects of an

immunization program by identifying at-risk and high-risk persons.

Presently 44 states have statewide or regional registries. Nationwide, although about 75 percent of public vaccination providers use them, only an estimated 31 percent of private providers do so. Only seven states have a majority (75 percent) of providers using their central registry. Although studies indicate that providers in general support registry use, several barriers persist. Many providers are not aware of the existence of a registry, despite significant promotion. Many are concerned that the registry available to them is not easily integrated into their other data systems (e.g., appointments, billing, electronic medical records), lacks accuracy compared with hard copy records, or does not already contain the immunization history of patients sufficient to make real-time decisions in the office. Fees and other costs are perceived as a barrier as well. However, published research has refuted the basis of many of these perceptions. CDC has found that the median cost per child younger than six years is \$4.71; another recent study estimated the per-shot additional cost at 56¢. Further, where a strong computer record system was put into place, registries were found to be 78 percent sensitive, compared with only 55 percent sensitivity for parental vaccination cards.

Given the presently low use of registries in private office practices, coupled with the high proportion of children (greater than 60 percent according to the 2003 National Immunization Survey) who receive at least some immunizations by private practitioners, a high degree of acceptance and use of registries by private providers is critical to its long-term success.

Purpose

This study is designed to determine methods and strategies to overcome obstacles to full, active participation of a state or county-based immunization registry ("central registry") by private practitioners. The methods and strategies developed and applied will seek to change procedures in those private practice offices in which county or state based immunization registries are not fully and actively used.

Several definitions apply for the purpose of this Announcement. "Community-based intervention" is defined here as an intervention program provided to all primary care physicians (principally, pediatricians and family practice physicians) in the community. For example, a general education

program provided to all such physicians in a community concerning the value of using a registry in their practice would qualify. On the other hand, a study involving pre-selection and enrollment of only certain local physicians, followed by an intervention provided only to them, even if designed to provide them with skills or materials suitable to achieve the outcome desired, would not qualify.

Full, active registry use by a practice, for the purpose of this Announcement, is defined as: (a) The existence of a highly functional central registry to receive reports from providers; (b) submission of new records from practices to the central registry at least twice per month; and (c) submission of greater than 50 percent of all new immunizations given by a provider since his/her last report.

This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases, specifically Objective 14–26 of increasing to 95 percent the proportion of children aged greater than six years who are enrolled in a fully operational population-based immunization registry.

Measurable outcomes of the program will be in alignment with the performance goal for the Center for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objective: To develop and test the effectiveness of a community-based intervention to increase registry participation in private physician offices.

Activities: Awardee activities for this program are as follows: Awardees will develop, pilot-test, implement, and evaluate a strategy to convert at least ten private practices (or 20 percent of all practices in the intervention community, whichever is less) from non-use or partial use to full registry use. The individual steps (activities) needed to accomplish this are described below.

1. Identify two geographic separate communities (e.g. Memphis vs. Knoxville or Kansas City vs. St Louis) in which relatively few primary care providers fully and actively participate in their state or regional immunization registry. One will serve as the intervention community, the other as the control. The control community should be demographically similar to the intervention community, but will not be exposed to the intervention. The control and intervention communities must be evaluated at the same time intervals and in the same manner during

the study. Providers from both communities must report to the same, single central registry site. The identity of the intervention and control communities and the justification for their selection should, if possible, be made explicit in the application. If one or both communities have not yet been identified, the applicant should specify their progress to date in identifying them.

2. In both communities, determine the knowledge, attitudes, and practices of local private providers and their staff concerning the use of registries in their office practices.

3. Within the intervention community, identify practice-based or physician-based barriers (and enablers) to the establishment and/or on-going full active use of registry programs.

4. Use these data to create, develop, and administer an intervention program designed to overcome identified barriers using education, non-cash incentives, and other, preferably novel methods. Program elements should be readily applicable to many types of practices, or alternatively, have the capacity to be easily tailored to each type of practice. The program may involve, for example, academic detailing, equipment purchase, train-the-trainer, management and training by the state or local health department or local immunization coalition, incentives by a local professional organization, or other methods. Multifaceted incentive programs are generally preferred over those with only one feature. This award is not intended to be used to develop or modify existing software already in use by the central registry. Justification should be shown to demonstrate that any motivators or (non-cash) reward system is low-cost and cost-efficient.

5. Assess the feasibility of providing the proposed intervention program to the entire intervention community before its full institution.

6. Provide the program throughout the intervention community over two years.

7. Measure the actual cost of the intervention program from the provider's perspective.

8. Measure the degree to which the intervention is associated with a change in the proportion of provider offices that become full active registry users. A successful outcome is defined as a practice that converts from non-use or partial use to full, active use of the registry, as defined above. The two-year goal is a 20 percent increase above the control community in the number of practices adopting full registry use by the 24th month. For relatively populous geographic areas, an alternate goal is a

conversion of at least 10 practices during this period.

9. Develop an evaluation plan and conduct research that documents changes in knowledge and attitudes and any collateral benefits resulting from the intervention relative to the control community. In addition, document any unexpected or untoward (negative) outcomes that result. These data may require before-after survey(s) and measurements of provider registry participation in the two communities, among other potentially valuable methods.

10. Collaboratively disseminate research findings in peer-reviewed publications and for use in determining national policy.

11. Develop and institute a plan for sustaining registry use in the geographic area once the last funding cycle ends.

In a cooperative agreement such as this, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).

2. Participate as active project team members in the development, implementation, conduct, and evaluation of the research project and as coauthors of scientific publications that result from the project.

3. Provide technical assistance on site selection, data collection instruments, analysis, and evaluation plan and methods.

4. Assist in the development of research protocols for Institutional Review Board (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.

5. Contribute subject matter expertise in epidemiologic methods, statistical analysis, and survey methods.

6. Participate in the analysis and dissemination of project findings and facilitate dissemination of these results.

7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.

8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

References

1. Glanzner JE, Beaty BL, Pearson KA et al. "Using an immunization registry: effect on practice costs and time". "Ambulatory Pediatrics 2004"; 4:34–40
2. Ortega AN, Andrews SF, Katz SH et al. "Comparing a computer-based childhood vaccination registry with

parental vaccination cards: a population-based study of Delaware children". "Clinical Pediatrics 1997"; 36:217-21.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: 2005.

Approximate Total Funding:

\$200,000. (Includes direct and indirect costs. This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award:

\$200,000. (Includes direct and indirect costs. This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: \$200,000.

(Includes direct and indirect costs. This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: 2 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications are limited to public and private nonprofit organizations and by governments and their agencies, such as: (For profit organizations are not eligible under Section 317(k)(1) [42 U.S.C. 247b(k)(1) of the Public Health Service Act, as amended.]

- Public nonprofit organizations.
- Private nonprofit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application fails to meet the following criteria, it will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet submission requirements. The applicant must:

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- Document in the Appendix that it satisfies the eligibility criteria of Section III.1.

- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support, provided they document in the Appendix that they represent the provider network for this project. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925-0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: <http://grants.nih.gov/grants/funding/phs398/phs398.html>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2.
- Font size: 12-point unrounded.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Announcement.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO-TIM staff at 770-488-2700, or contact GrantsInfo, Telephone (301) 435-0714, E-mail: GrantsInfo@nih.gov.

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit

identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711.

For more information, see the CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcomm1.htm>.

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 10, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 27, 2005.

Explanation of Deadlines: LOIs must be received in the CDC Office of Public Health Research (OPHR) and applications must be received in the CDC Procurement and Grants Office by 4:00 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier.

If you still have a question concerning your LOI, contact the OPHR staff at 404-371-5277. If you still have a question concerning your application, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: <http://www.whitehouse.gov/omb/grants/spoc.html>.

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to:

Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72.

Telephone: 404-371-5277.

Fax: 404-371-5215.

E-mail: MLerchen@cdc.gov.

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management "RFA IP05-096, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public

Health Research, One West Court Square, Suite 7000, MS D-72.

Telephone: 404-371-5277.

Fax: 404-371-5215.

E-mail: MLerchen@cdc.gov.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem in this community? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field, especially, on the use of registries by other private practitioners?

Select two geographically-defined communities composed of 25 or more pediatrics or family practice groups (each of which may have more than one immunization provider) where full active immunization registry participation is rare but exists. One will serve as the intervention community, the other as the control community. The control community, defined as one not subjected to the intervention, should be

approximately the same size and socio-demographic composition as the intervention community. As a guide concerning size, a suitable intervention or control community should have more than five percent but fewer than 30 percent of its practices actively and fully participating prior to the intervention.

Document the number of practices in the intervention and control communities and their degree of registry use, and registry capacity in terms of core standards present (see below).

12 Functional Standards of a Registry:

(1) Electronically store data on all core data elements approved by the National Vaccine Advisory Committee (NVAC);

(2) Establish a registry record within six weeks of birth for each newborn child born in the geographic catchment area;

(3) Enable access to and retrieval of immunization information in the registry at the time of encounter;

(4) Receive & process immunization information within one month of vaccine administration;

(5) Protect the confidentiality of health care information;

(6) Ensure security of health care information;

(7) Exchange immunization records using HL7 standards;

(8) Automatically determine the routine childhood immunization(s) needed, in compliance with current ACIP recommendations, when an individual presents for a scheduled immunization;

(9) Automatically identify individuals due/late for immunization(s) to enable the production of reminder/recall notifications;

(10) Automatically produce immunization coverage reports by providers, age groups, and geographic areas;

(11) Produce official immunization records; and

(12) Promote accuracy and completeness of registry data.

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

To what extent has the applicant selected suitable and appropriate intervention and control communities according to the application guidance concerning: (1) The number of practices presently in operation; (2) the number of practices currently using a registry to any extent; (3) the extent to which a single central registry exists for the

intervention and control communities; and (4) the extent to which that central registry complies with the functional registry standards described above.

To what extent has the applicant fully engaged the assets of an immunization or child health coalition, as well as university researchers experienced in evaluation science?

Identify the central registry to be used, and include a letter of support from an authorized official of that central registry. Because this application seeks to engage private practice offices in the use of an existing central registry, that registry should be highly functional already. Twelve accepted functional standards of registries listed below are metrics of maturity and performance; the registry to which the provider submits new data must meet Standards 3, 4, 5, and 6, plus any three of the other eight functional standards below. Documentation of the degree to which the applicant's registry meets these standards should be included in the Appendix of the application. Additional information concerning these standards may be found at <http://www.cdc.gov/nip/registry/min-funct-stds2001.htm>.

12 Functional Standards of a Registry:

(1) Electronically store data on all core data elements approved by the National Vaccine Advisory Committee (NVAC);

(2) Establish a registry record within six weeks of birth for each newborn child born in the geographic catchment area;

(3) Enable access to and retrieval of immunization information in the registry at the time of encounter;

(4) Receive & process immunization information within one month of vaccine administration;

(5) Protect the confidentiality of health care information;

(6) Ensure security of health care information;

(7) Exchange immunization records using HL7 standards;

(8) Automatically determine the routine childhood immunization(s) needed, in compliance with current ACIP recommendations, when an individual presents for a scheduled immunization;

(9) Automatically identify individuals due/late for immunization(s) to enable the production of reminder/recall notifications;

(10) Automatically produce immunization coverage reports by providers, age groups, and geographic areas;

(11) Produce official immunization records; and

(12) Promote accuracy and completeness of registry data.

The nature of the intended intervention and its evaluation must be specified. If the proposed intervention involves direct communication with office practice staff, the applicant must include in the Appendix letters of support indicating agreement concerning their access to a variety of types of provider offices, or alternatively, note their experience in conducting on-site interventions in practitioners' offices and discuss ways they intend to overcome such barriers.

Show evidence via letter(s) of support that they plan to work in partnership with the state and/or local immunization registry manager.

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

The applicant must have active and substantial participation from each of three groups: (1) University faculty; (2) state and/or local health department personnel; and (3) an immunization coalition. If such a coalition does not presently exist, the applicant must describe how either a broad-based coalition or advisory board will be developed during the first six months. This group should consist of physicians and nurses who treat children, health educators, and pharmacists; officials from government health department and other key health and social services; administrative representatives from health care organizations, licensed child care centers, health maintenance organizations, insurers, and hospitals; and interested parents, business, and community leaders. University faculty should be qualified and interested in conducting program evaluation research. Explicit, detailed, written commitments should be provided as letters of support in the Appendix of the application, and will strengthen the application.

Environment: Does the scientific environment in which the work will be done contribute to the probability of success?

Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Are letters of support included, if appropriate?

Has the supplied evidence indicated project support and full engagement by immunization coalitions, university, and public health?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

1. To what extent has the applicant provided detail indicating the functioning level of the central registry that indicates its full functional capacity according to the guidelines provided above?

2. As an indication of its degree of functionality, the central registry to which the providers submit new data must meet Standards 3, 4, 5, and 6 described above plus any three of the eight other functional standards outlined there.

3. Has the applicant addressed each of the special requirements under Section III.3?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 Part 46 for the protection of human subjects? The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the OPHR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance

through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section, a Special Emphasis Panel (SEP), convened by the OPHR in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

- Receive a written critique.
- Receive a second programmatic level review by the Office of Science, National Immunization Program.
- Undergo a peer review by a SEP. The SEP will be selected from the NIH pool of scientists or recommendations from the National Immunization Program to serve as reviewers on SEPs. Applications will be ranked for the secondary review according to scores submitted by the SEP. Only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

Preference will be given to applicants with experience working collaboratively with CDC or other granting agency, particularly on immunization research projects.

V.3. Anticipated Announcement and Award Dates

Award Date: August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-1 Human Subjects Requirements.
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR-7 Executive Order 12372.
- AR-10 Smoke-Free Workplace Requirements.
- AR-11 Healthy People 2010.
- AR-12 Lobbying Restrictions.
- AR-15 Proof of Non-Profit Status.
- AR-22 Research Integrity.
- AR-24 Health Insurance Portability and Accountability Act Requirements.
- AR-25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925-0001, rev. 9/2004 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following additional elements:

- a. Progress Toward Measures of Effectiveness.
- b. Additional Information Requested by Program.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770-488-2700.

For scientific/research issues, contact: Susan Chu, PhD, MSPH, Extramural Program Official, National Immunization Program, Centers for Disease Control and Prevention, National Immunization Program, MS E-05, 1600 Clifton Road NE, Atlanta, GA 30333. Telephone: 404-639-8727. E-mail: SChu@cdc.gov.

For questions about peer review, contact: Mary Lerchen, DrPH, Scientific Review Administrator, CDC/Office of Public Health Research, One West Court Square, Suite 7000, MS D-72. Telephone: 404-371-5277. Fax: 404-371-5215. E-mail: MLerchen@cdc.gov.

For financial, grants management, or budget assistance, contact: Yolanda Ingram-Sledge, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770-488-2787. E-mail: Ysledge@cdc.gov.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

Dated: May 5, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*

[FR Doc. 05-9371 Filed 5-10-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N-0045]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 10, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT:

Karen Nelson, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Electronic Records; Electronic Signatures—(21 CFR Part 11) (OMB Control Number 0910-0303)—Extension

FDA regulations in part 11 (21 CFR part 11) provide criteria for acceptance of electronic records; electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided the agency has stated our ability to accept the records electronically in an agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300)

require standard operating procedures (SOPs) to assure appropriate use of, and precautions for, systems using electronic records and signatures: (1) Section 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) section 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) section 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) section 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provisions (§ 11.100) require persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of SOPs, validation, and certification. The agency anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA required records.

The respondents are businesses and other for-profit organizations, State or local governments, Federal agencies, and nonprofit institutions.

In the **Federal Register** of February 7, 2005 (70 FR 6447), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
11.100	4,500	1	4,500	1	4,500

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
11.10	2,500	1	2,500	20	45,000
11.30	2,500	1	2,500	20	45,000
11.50	4,500	1	4,500	20	90,000
11.300	4,500	1	4,500	20	90,000
Total					270,000

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 4, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9370 Filed 5–10–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0021]

International Conference on Harmonisation; Draft Guidance on Q8 Pharmaceutical Development; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 11, 2005, the comment period for the notice, published in the **Federal Register** of February 9, 2005 (70 FR 6888). In the notice, FDA announced the availability of a draft guidance entitled “Q8 Pharmaceutical Development.” FDA is reopening the comment period to provide additional time for public comment consistent with the time for comment provided by other ICH regulatory entities.

DATES: Submit written or electronic comments on the draft guidance by June 11, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–

240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Ajaz Hussain, Center for Drug Evaluation and Research (HFD–3), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2847; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–435–5681.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 9, 2004 (70 FR 6888), FDA announced the availability of a draft guidance entitled “Q8 Pharmaceutical Development,” prepared under the auspices of the ICH. The draft guidance provides recommendations to sponsors concerning pharmaceutical studies as defined in section 3.2.P.2 of module 3 of the Common Technical Document (CTD).

Interested persons were given until April 11, 2005, to submit comments on the draft guidance.

FDA has decided to reopen the comment period on the draft guidance

until June 11, 2005, to allow the public additional time to review and comment on the contents and to be consistent with the time for comment provided by other ICH regulatory entities.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the documents at <http://www.fda.gov/ohrms/dockets/default.htm>, <http://www.fda.gov/cder/guidance/index.htm>, or <http://www.fda.gov/cber/publications.htm>.

Dated: May 4, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–9369 Filed 5–10–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: April 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of April 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is

imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no

program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program

payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name	Address	Effective date
<i>Program-Related Convictions:</i>		
Aguiluz, Amable	Whittier, CA	5/19/2005
Alvis, Sandra	Pennsauken, NJ	5/19/2005
Antoine L Garabet, MD, Inc	Glendora, CA	5/19/2005
Avello, Alexis	Miami Beach, FL	5/19/2005
Beal, Darlene	Tulsa, OK	5/19/2005
Bisig, Peggy	Lexington, KY	5/19/2005
Blake, Christine	Alpharetta, GA	5/19/2005
Bolshinsky, Igor	Potomac, MD	5/19/2005
Bondar, Raisa	Mequon, WI	5/19/2005
Brooks, Antonio	Washington, NC	5/19/2005
Brown, Joseph	Florence, SC	5/19/2005
Chand, Puran	Stanton, CA	5/19/2005
Coughlin, Daniel	Metairie, LA	5/19/2005
Cullen, Linda	Kailua Kona, HI	5/19/2005
Cushing, Monica	Barre, VT	5/19/2005
Daniels, Salmon	Los Angeles, CA	5/19/2005
Deguzman, Maria	Cerrutis, CA	5/19/2005
Doll, Charles	Jacksonville, FL	2/11/2005
Esposito, Michelina	Portland, ME	5/19/2005
Fosness, Christopher	Mitchell, SD	5/19/2005
Garabet, Antoine	Glendora, CA	5/19/2005
Gokhman, Boris	Mequon, WI	5/19/2005
Goulette, Billy	Long Beach, CA	5/19/2005
Hall, Harry	Labelle, FL	5/19/2005
Igbinuwa, Newton	Jamaica, NY	5/19/2005
Jamias, Alexander	Buena Park, CA	5/19/2005
Jani, Axat	Saddle River, NJ	5/19/2005
Jimenez, Jose	Camden, NJ	5/19/2005
Johnson, Paul	Loma, CO	5/19/2005
Legro, Danny	Chehalis, WA	5/19/2005
Lemieux, India	Gretna, LA	5/19/2005
Lisak, Alla	Bayside, WI	5/19/2005
Mailyan, Melik	Burbank, CA	5/19/2005
Melendez, Juanita	Camden, NJ	5/19/2005
Moore, Garyl	York, PA	5/19/2005
Munoz, Cynthia	Phoenix, AZ	5/19/2005
Myaskovskaya, Valentina	Milwaukee, WI	5/19/2005
Panshi, Surinder	Wasco, CA	5/19/2005
Passamonte, Christopher	Camp Hill, PA	5/19/2005
Ramos, Robert	Carolina, PR	5/19/2005
Reyes-Lopez, Harry	Hatillo, PR	5/19/2005
Rizzo, Kenneth	Goshen, NY	5/19/2005
Salas, Patricia	Las Cruces, NM	5/19/2005
Salvo, Mark	Glendale, CA	5/19/2005
Schoenborn, Mark	Ponte Verdra Beach, FL	2/11/2005
Skrinskaya, Natalya	Silver Spring, MD	5/19/2005
TBC Products, Inc	Golden Valley, MN	11/12/2004
Tirakian, Harutyun	Glendale, CA	5/19/2005
Turner, Jessie	Chickasha, OK	5/19/2005
Vann, Sinnaro	Long Beach, CA	5/19/2005
Walton, Wanda	Vallejo, CA	5/19/2005
Winding, Devona	New Orleans, LA	5/19/2005
Yelin, Bella	Mequon, WI	5/19/2005
Zarlengo, Phillip	Littleton, CO	5/19/2005
<i>Felony Conviction for Health Care Fraud:</i>		
Budenske, Jerry	Oklahoma City, OK	5/19/2005
Faulkner, Glenna	Ewing, KY	5/19/2005
Fox, Calvin	Tucson, AZ	5/19/2005
Hinds, Sandra	Wheaton, MD	5/19/2005
Holliday, Gregory	Bethany, OK	5/19/2005
Hunt, Kimberly	Oxnard, CA	5/19/2005
Jango, Angela	Newport News, VA	5/19/2005
Libson, Todd	Simi Valley, CA	5/19/2005

Subject name	Address	Effective date
Moore, Nicole	Broken Arrow, OK	5/19/2005
Pickering, Joanne	Tucson, AZ	5/19/2005
Ray, Natacha	Broken Arrow, OK	5/19/2005
Sanders, Marvin	Charlottesville, VA	5/19/2005
Santamaria, Rene	Apache Junction, AZ	5/19/2005
Schneider, Harvey	Norton, MA	5/19/2005
Thompson, Kimberly	Danville, KY	5/19/2005
Felony Control Substance Conviction:		
Allen, Jana	Kansas City, MO	5/19/2005
Aulner, Kathleen	Norfolk, NE	5/19/2005
Breece, Robin	Groves, TX	5/19/2005
Chaussee, Mary	Rocklin, CA	5/19/2005
Christensen, Kim	Mesa, AZ	5/19/2005
Davis, Keri	Flower Mound, TX	5/19/2005
Fanning, James	Sherman, TX	5/19/2005
Friedman, Eugene	Port Jefferson, NY	5/19/2005
Greening, Brian	Edinburg, TX	5/19/2005
Haskins, Tammy	Midland, TX	5/19/2005
Hermann, Raymond	Vancouver, WA	5/19/2005
Johnson, Karen	Blue Ridge, GA	5/19/2005
Libengood, Stacey	Clearwater, FL	5/19/2005
Moore, Janet	Gainesville, GA	5/19/2005
Moore, Mary	Painesville, OH	5/19/2005
Morelli, Timothy	Mercer, PA	5/19/2005
Palladini, Michael	Beaver, PA	5/19/2005
Renteria, Jeanette	Burleson, TX	5/19/2005
Sibley, Leslie	Tulsa, OK	5/19/2005
Spencer, Verinda	Houston, TX	5/19/2005
Stanton, James	Houston, TX	5/19/2005
Ushio, Keri-Ann	Honolulu, HI	5/19/2005
Varalli, Daniel	Beaver, WV	5/19/2005
Wein, Fred	Brooklyn, NJ	5/19/2005
Wisby, Amy	Hamersville, OH	5/19/2005
Patient Abuse/Neglect Convictions:		
Bemah, Elisha	Washington, DC	5/19/2005
Cage, Christine	Chillicothe, MO	5/19/2005
Chrisman, Christopher	Del City, OK	5/19/2005
Cotten, Bradley	Canon City, CO	5/19/2005
Davis, Rose	Santa Fe, NM	5/19/2005
Garay, Rosalinda	Salt Lake City, UT	5/19/2005
Harris, Linda	Henryetta, OK	5/19/2005
Henry, Jonathan	Malone, FL	5/19/2005
Hewuse, Roselyn	Green Bay, WI	5/19/2005
Jobes, Philip	Towson, MD	5/19/2005
Johnson, Arlin	Oklahoma City, OK	5/19/2005
Jones, David	Hodgen, OK	5/19/2005
Kizziar, Mary	Fairfax, OK	5/19/2005
Lomas, Terena	Grove, OK	5/19/2005
Myers, Roger	Trainer, PA	5/19/2005
Quintero, Mary	Denver, CO	5/19/2005
Russell, Barbara	Sallisaw, OK	5/19/2005
Rutherford, Helen	Ruston, LA	5/19/2005
Simpson, Jimmy	Bartlesville, OK	5/19/2005
Smith, Ada	Pearl, MS	5/19/2005
Stultz, Helen	Hugo, OK	5/19/2005
Thomas, Annamma	Yonkers, NY	5/19/2005
Topel, Lisa	Chillicothe, MO	5/19/2005
Torrez, Pearl	Tulsa, OK	5/19/2005
Turner, Barbara	Louin, MS	5/19/2005
Valenzula, Carlos	Los Angeles, CA	5/19/2005
Watters, Winifred	Visalia, CA	5/19/2005
Wolos, Jeffrey	Swartz Creek, MI	5/19/2005
Woolen, James	Washington, DC	5/19/2005
Conviction for Health Care Fraud:		
Poehlman, Eric	Quebec, H2L3R8,	3/17/2005
License Revocation/Suspension/Surrendered:		
Agygman, Osei	Pomona, CA	5/19/2005
Albus, Rhonda	Knox City, TX	5/19/2005
Alexander, Anu	Tucson, AZ	5/19/2005
Alexander, Julie	Cherry Hill, NJ	5/19/2005
Allen, Chandra	Trotwood, OH	5/19/2005
Ambrose, Dean	Merchantville, NY	5/19/2005
Archer, Teresa	Johnson City, TN	5/19/2005
Arvesen Aebischer, Barbara	San Diego, CA	5/19/2005

Subject name	Address	Effective date
Baker, Patrick	Corona, CA	5/19/2005
Benninger, Kimberly	Los Angeles, CA	5/19/2005
Benson, Tracy	Murray, UT	5/19/2005
Boulos-Pludowski, Georgeann	Phillipsburg, NJ	5/19/2005
Bowyer, Marvin	St Louis, MO	5/19/2005
Boyer, Bethany	Valrico, FL	5/19/2005
Bradshaw, Minnie	Columbia, SC	5/19/2005
Brennan, Patricia	Punta Gorda, FL	5/19/2005
Britton, Cory	St George, UT	5/19/2005
Brown, Alexandria	Williamstown, NJ	5/19/2005
Brown, Dana	Mount Olive, AL	5/19/2005
Bruce, Julie	Indianapolis, IN	5/19/2005
Bryant, Mark	Jasper, AL	5/19/2005
Bullock, Keith	Detroit, MI	5/19/2005
Cabatic, Virginia	Randolph, NJ	5/19/2005
Carlson, Craig	Minneapolis, MN	5/19/2005
Caron, Marleen	Lincoln, NH	5/19/2005
Carranto, Manuel	Riverside, CA	5/19/2005
Carter, Lynda	Loudon, NH	5/19/2005
Casey, Terry	Covington, KY	5/19/2005
Chagnon, Stephen	Glens Falls, NY	5/19/2005
Chard, Suzanne	Parker, CO	5/19/2005
Charlera, Marie	Boynton Beach, FL	5/19/2005
Charzewski, Stanley	Staten Island, NY	5/19/2005
Childers, Stella	Muskogee, OK	5/19/2005
Clark, Diane	Longmont, CO	5/19/2005
Cochran, Stephanie	Hackleburg, AL	5/19/2005
Cohen, Veronica	Lansdowne, PA	5/19/2005
Collins, Cindy	North Vernon, IN	5/19/2005
Combs, Vontella	Bulan, KY	5/19/2005
Cook, Anthony	Beaver, WV	5/19/2005
Couch, Joann	Bullhead City, AZ	5/19/2005
Crayton, Donna	Alliance, OH	5/19/2005
Cruz, Rosalito	Carson, CA	5/19/2005
Daniels, Arthur	Phoenix, AZ	5/19/2005
Daniels, James	Panama City, FL	5/19/2005
Donegan, Kathleen	Yuma, AZ	5/19/2005
Driscoll, Debra	N Hollywood, CA	5/19/2005
Duffy, William	Mahtomedi, MN	5/19/2005
Duncan, Kimberly	Pisgah Forest, NC	5/19/2005
Ecker, Betty L	Lufkin, TX	5/19/2005
EdInbyrd, Geraldine	San Bernardino, CA	5/19/2005
Edwards, David	Salt Lake City, UT	5/19/2005
Edwards, Michael	Tarzana, CA	5/19/2005
Egloff, Mary	Farmingdale, NJ	5/19/2005
Elder, Kimberly	Marshall, AR	5/19/2005
Ellison, Amy	Anniston, AL	5/19/2005
Eskue, Phyllis	Kilgore, TX	5/19/2005
Esmay, Kristine	Prescott, AZ	5/19/2005
Evans, Catherine	Hager Hill, KY	5/19/2005
Ferry, Lois	Cincinnati, OH	5/19/2005
Fiala, Robin	Manchester, NH	5/19/2005
Foy, Brian	Melbourne, FL	5/19/2005
Ghory, Farooq	Winter Park, FL	5/19/2005
Gill, Joyce	Cincinnati, OH	5/19/2005
Griesemer, Chantal	Ballston Lake, NY	5/19/2005
Guardipee, Josette	Pueblo, CO	5/19/2005
Hart, Eva	Galena, KS	5/19/2005
Hart, Kelly	Verona, PA	5/19/2005
Harvan, Roberto	Glendale, AZ	5/19/2005
Haskie, Julie	Chinle, AZ	5/19/2005
Hatfield, Benjamin	Knoxville, TN	5/19/2005
Hill, Beverly	Phoenix, AZ	5/19/2005
Hopkins, Mary	Clute, TX	5/19/2005
Horwitz, Harlene	Oklahoma City, OK	5/19/2005
Hughes, Joyce	Las Vegas, NV	5/19/2005
Hunter, Angela	Gainesboro, TN	5/19/2005
Illingworth, Donna	Forked River, NJ	5/19/2005
Ingles, Sandra	Palm Desert, CA	5/19/2005
James, Nicholas	Phoenix, AZ	5/19/2005
Jarke, Cheryl	Rittman, OH	5/19/2005
Johnson, Anthony	Beverly Hills, CA	5/19/2005
Johnson, Callie	Tulsa, OK	5/19/2005
Johnson, Mary	Taft, CA	5/19/2005

Subject name	Address	Effective date
Junge, Rebecca	Saint Louis, MO	5/19/2005
Kahaloui, Ronald	Modesto, CA	5/19/2005
Kaplan, Claudette	Port Orchard, WA	5/19/2005
Katzorke, Michael	Sioux Falls, SD	5/19/2005
Kee, Jimmy	Huntingdon, TN	5/19/2005
Kessler, Susan	Tamarac, FL	5/19/2005
Kirkpatrick, Molly	Punta Gorda, FL	5/19/2005
Koscinski, Charles	Downey, CA	5/19/2005
Kovar, Grace	Brick, NJ	5/19/2005
Kroeger, Susan	Evansville, IN	5/19/2005
Kurtz, Joel	Livingston, NJ	5/19/2005
Lange, Dennis San	Mateo, CA	5/19/2005
Langley, Troy	Erin, TN	5/19/2005
Lester, Linda	Tucson, AZ	5/19/2005
Leveque, Phillip	Portland, OR	5/19/2005
Linn, David	Craig, CO	5/19/2005
Logue, Bridgette	Shelbyville, TN	5/19/2005
Long, Andrew	Fayetteville, NC	5/19/2005
Lovett, Asante	Tulsa, OK	5/19/2005
Lyde, Marlene	Norwalk, CA	5/19/2005
Lyon, Robin	Lynnwood, WA	5/19/2005
Machicek, Sherri	Victoria, TX	5/19/2005
Malone, Joanne	Dallas, TX	5/19/2005
Maloney, Jeffrey	Phoenix, AZ	5/19/2005
Manuel, Christal	Evergreen, LA	5/19/2005
Marshall, Brenda	Bellevue, FL	5/19/2005
Martinez, Christina	Sahuarita, AZ	5/19/2005
McLaurin, Mildred	Carrboro, NC	5/19/2005
McNamara, Peggy	Puyallup, WA	5/19/2005
Mohalla, Aiman	Long Beach, CA	5/19/2005
Moore, Tiffany	Chandler, AZ	5/19/2005
Morrissey, Maryellen	Ormond Beach, FL	5/19/2005
Moss, Albert	Somerset, NJ	5/19/2005
Mullins, Lonnie	Columbus, OH	5/19/2005
Murphree, Arlene	Tulsa, OK	5/19/2005
Nagel, Tiffany	League City, TX	5/19/2005
Neide, Deborah	Umatilla, FL	5/19/2005
Nemitz, Lacey	Mount Vernon, WA	5/19/2005
Nenadov, Barney	Canyon Country, CA	5/19/2005
Nesbit, Harriet	Rutland, VT	5/19/2005
Newington, Marlene	Hartford, MI	5/19/2005
Newmark, Malinda	Monroe TWP, NJ	5/19/2005
Noel, Beverly	New Hall, CA	5/19/2005
Nugent, Dana	Pineville, LA	5/19/2005
Nunnery, Larita	Kent, WA	5/19/2005
OBright, Teresa	W Chicago, IL	5/19/2005
Osborne, Robelto	Miami, FL	5/19/2005
Ottenstein, Alan	Washington Crossing, PA	5/19/2005
Owens, Catherine	Glencoe, AL	5/19/2005
Pagano, Dwight	New York, NY	5/19/2005
Parker-Robinson, Letrice	Long Beach, CA	5/19/2005
Paulsen, John	Beaver, UT	5/19/2005
Paxton, Marla	Delong, IN	5/19/2005
Pearson, Shirley	Rapid City, SD	5/19/2005
Penalver, Faith	Roosevelt, NJ	5/19/2005
Perry, Regan	Huntsville, AL	5/19/2005
Plaia, Daneta	Hickory Hills, IL	5/19/2005
Potter, Joan	Ventura, CA	5/19/2005
Presilla, Alejandro	Weehawken, NJ	5/19/2005
Ramsey, James	Concord, NH	5/19/2005
Rice, Ginger	Newport, TN	5/19/2005
Robinson, Anne	Redondo Beach, CA	5/19/2005
Robles, Karin	Yelm, WA	5/19/2005
Rodriguez, Callis	Fontana, CA	5/19/2005
Roring, Kellie	Orem, UT	5/19/2005
Rudolph, Angaharad	Bradenton, FL	5/19/2005
Sanders, Cheryl	Riverside, AL	5/19/2005
Schick, Peter	Van Nuys, CA	5/19/2005
Schirmer, Christopher	North Bennington, VT	5/19/2005
Schultz, Becky	Greeley, CO	5/19/2005
Schunk, Brenda	Tucson, AZ	5/19/2005
Sieverding, Gregory	Peru, NY	5/19/2005
Silver, Maria	Las Vegas, NV	5/19/2005
Simon, Lynn	Cape Coral, FL	5/19/2005

Subject name	Address	Effective date
Smith, Nicholas	Oviedo, FL	5/19/2005
Steidl, Elizabeth	Palm Bay, FL	5/19/2005
Stiver, Dorothea	Clanton, AL	5/19/2005
Suggs, Sharon	Adamsville, TN	5/19/2005
Sutphin, Mary	Goodview, VA	5/19/2005
Swartz, Theresa	Jacksonville, FL	5/19/2005
Taylor, Ronald	Carson, CA	5/19/2005
Tebo, Elizabeth	Grover, MO	5/19/2005
Thomas, Cynthia	Brooksville, FL	5/19/2005
Turk, Harold	West Hills, CA	5/19/2005
Valandry, Kelly	Tucson, AZ	5/19/2005
Vaughn, Barbara	Kingsport, TN	5/19/2005
Vidal, Emalee	Gig Harbor, WA	5/19/2005
Vincelette, Brandi	Enosburg Falls, VT	5/19/2005
Von Hoffen, Laura	Chicago, IL	5/19/2005
Vu, Uong	San Diego, CA	5/19/2005
Walker, Robert	Sand Springs, OK	5/19/2005
Wamsley, Patricia	Mansfield, OH	5/19/2005
Watkins, William	Vista, CA	5/19/2005
Wilson, Michael	Chicago, IL	5/19/2005
Wilson, Orphia	Orlando, FL	5/19/2005
Wizes, Adrian	Lake George, NY	5/19/2005
Wood, Danielle	Irving, TX	5/19/2005
Wood, Margaret	Denver, CO	5/19/2005
Wukawitz, Thomas	St Paul, MN	5/19/2005
Zapata, Francisco	Oxnard, CA	5/19/2005
Zini, Julie	Annandale, MN	5/19/2005
Federal/State Exclusion/Suspension:		
Gonzales, Thomas	Las Vegas, NV	5/19/2005
Groombridge, Colleen	Gillette, WY	5/19/2005
Umansky, Olga	Los Angeles, CA	5/19/2005
Fraud/Kickbacks/Prohibited Acts/Settlement Agreements:		
Masri, Asad	Chesterfield, VA	10/6/1994
Owned/Controlled by Convicted Entities:		
Advanced Physicians Management, Inc	Ocoee, FL	5/19/2005
Americare Medical Supply, Inc	Los Angeles, CA	5/19/2005
Default on Heal Loan:		
Kilmer, David	Troutville, VA	2/22/2005
Mazhar, Mark	Woodland Hills, CA	4/18/2005

Dated: April 28, 2005.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 05-9374 Filed 5-10-05; 8:45 am]

BILLING CODE 4152-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Inventory and Evaluation of Clinical Research Networks

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 30, 2004, page

58451 and 58452 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection:

Title: Inventory and Evaluation of Clinical Research Networks.

Type of Information Collection Request: NEW.

Need and Use of Information

Collection: This project is part of the NIH Roadmap to improve the speed and effectiveness of translating basic scientific discoveries into clinical products and practices that improve health care. The project, which is related to the Reengineering of the Clinical Research Enterprise, has been designed to enhance the efficiency and productivity of clinical research by promoting clinical research networks to

rapidly conduct high quality clinical studies where multiple research questions can be addressed. Specifically, this study involves (1) developing an inventory and database of clinical research networks, (2) asking representatives from these networks to respond to an Inventory Questionnaire (Tier 1) that will allow us to update information we collected from public sources and gather additional information on network characteristics, and (3) conducting more in-depth surveys (Tier 2) with 1/3 of the identified networks (Tier 2). Data will be used to characterize the selected networks in terms of network focus, management and governance, effectiveness in changing clinical practice, informatics infrastructure, and training and training infrastructure. Best practices will be identified and presented at a national leadership forum.

Frequency of Response: Networks will be asked to respond to the Inventory Questionnaire (Tier 1) once. It is anticipated that 60% of the networks queried will actually meet the network eligibility criteria. A 1/3 sample of the

eligible networks will also be asked to complete an additional more in-depth survey (Tier 2).

Affected Public: Staff at clinical research networks.

Type of Respondents: Staff completing the surveys will include physicians, nurses, administrators, financial analysts, information technology professionals, and clerks.

The annual reporting burden is as follows:

ESTIMATES OF HOUR BURDEN AND ANNUALIZED COST TO RESPONDENTS

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden	Hourly wage rate	Respondent cost
Core Survey						
Principal Investigator/Physician	240	1	.25	60	\$470.00	\$4,200.00
Extended Surveys						
(1) Funding: Financial Managers	100	1	.75	75	38.00	2,850.00
(2) Focus! Scientific Productivity, Management, and Governance: Principal Investigator! Physician	100	1	1.25	125	70.00	8,750.00
(3) Network Operations and Training: Study Coordinator! Registered Nurse	100	1	1.25	125	25.00	3,125.00
(4) Recruitment and Retention: Study Coordinator! Registered Nurse	100	1	.50	50	25.00	1,250.00
(5) Information Technology (IT) and Data Management: Network and Database Administrators	100	1	1.0	100	29.00	2,900.00

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20502, Attention: NIH Desk Officer. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Paul Sorlie, Division of Epidemiology and Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC #7934, Bethesda, MD 20892-7934, or

call non-toll-free number (301) 435-0707, or e-mail your request, including your address to: sorliep@nhlbi.nih.gov.

Comments Due Date: Comments regarding this information collected are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 4, 2005.

Charles Mackay,

Chief, Project Clearance Liaison, National Institutes of Health.

[FR Doc. 05-9393 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage

for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: (301) 496-7057; fax: (301) 402-0220. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Preparation and Use of Androgenic Compounds: Nandrolone 17beta-carbonates

Richard P. Blye and Hyun K. Kim
(NICHHD)

U.S. Provisional Application No. 60/650,376 filed 04 Feb 2005 (DHHS)

Reference No. E-181-2004/0-US-01)
Licensing Contact: Marlene Shinn-Astor;
301/435-4426; shinnm@mail.nih.gov.

Hypogonadism is defined as deficient or absent male gonadal function that results in insufficient testosterone secretion. Hypogonadism can be caused by surgery; radiation; genetic and developmental disorders; liver and kidney disease; infection; and certain auto-immune disorders. The most common genetic disorders are Klinefelter syndrome found in men and Turner syndrome in women.

Hypogonadism affects an estimated 4 to 5 million men in the United States, and although it may occur in men at any

age, low testosterone levels are especially common in older males. More than 60% of men over age 65 have free testosterone levels below the normal values of men aged 30 to 35. Studies suggest that hypogonadism in adult men is often underdiagnosed and under treated. This may be because the symptoms are easily attributed to aging or other medical causes, or ignored by patients and physicians. In fact, only about 5% of hypogonadal men receive testosterone replacement. Some experts also believe that we need to reevaluate normal testosterone levels and lower the diagnostic cutoff for hypogonadism. By doing so, many patients who we now consider to be "low-normal" would probably be considered candidates for androgen replacement.

The inventors have discovered androgenic compounds, the lead compound being 17beta-carbonates of nandrolone derivatives. These compounds can be used to treat hypogonadism, as hormonal therapy and as a male contraceptive. The disclosed carbonates have potent activity when administered as an oral composition. In addition, long-lasting activity has also been observed with subcutaneous administration in laboratory animals. It is foreseen that these androgens can be utilized in hormonal replacement therapy for both men and women, which constitute a huge market both in the United States and abroad.

Dated: May 4, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05-9395 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 23-24, 2005.

Closed: May 23, 2005, 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: May 24, 2005, 8:30 a.m. to Adjournment.

Agenda: A Report of the FIC Director on updates and overviews of new FIC initiatives. Topics to be discussed: The Internet: Globalization of Health Research in the 21st Century.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Jean L. Flagg-Newton, PhD, Special Assistant to the Director, FIC, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Building 31, Room B2C29, Bethesda, MD 20892, (301) 496-2968, flaggnej@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's Home page: <http://www.nih.gov/fic/about/advisory.html>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9363 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Transition Career Development Award PAR-04-040.

Date: May 18, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8113, MSC 8328, Bethesda, MD 20892-8328, 301-496-7978, birdr@mail.nih.gov.

This notice is being published less than 15 days prior to meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9360 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Cancer Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Review of P01 Grant Applications.

Date: May 18, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Sunghan Yoo, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., Room 8146, Bethesda, MD 20892, (301) 594-9025, yoosu@mail.nih.gov.

This notice is being published less than 15 days prior to meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9362 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Center for Complementary and Alternative Medicine; Notice of Meeting**

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: June 3, 2005.

Closed: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1:30 p.m. to adjournment.

Agenda: The agenda includes new NIH conflict of interest regulations by Michael Gottesman, opening Remarks by Director, NCCAM, research concepts, and other business of the Council.

Place: Natcher Conference Center, 45 Center Drive, Conference Rooms E1 and E2, Bethesda, MD 20892.

Contact Person: Jane F. Kinsel, Ph.D., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496-6701.

The public comments session is scheduled from 4:15-4:30 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda,

Maryland 20892, 301-496-6701, Fax: 301-480-0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on May 24, 2005. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (June 13, 2005) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301-496-6701, Fax 301-480-0087, or via email at naccames@mail.nih.gov.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 05-9361 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

Date: July 11, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8898, barnardm@extra.niddk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Preventing Mitochondrial Oxidative Stress in Diabetes and Obesity.

Date: July 13-15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Plaza III, Rockville, MD 20852.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7682, pateldg@niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9356 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 13-14, 2005.

Open: June 13, 2005, 2 p.m. to 2:30 p.m.

Agenda: To review procedures and discuss policies.

Place: Crystal City Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: June 13, 2005, 2:30 p.m. to 10 p.m.

Agenda: To review procedures and discuss policies.

Place: Crystal City Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: June 14, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7798, muston@extra.niddk.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9357 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: June 1-2, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-7705, hsul@exmur.nia.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 2-3, 2005.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496-9666, markowsa@nia.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: June 9-10, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496-9666, latonia@mail.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: June 9, 2005.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402-7708.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9358 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mechanism for Time-Sensitive Research Opportunities.

Date: June 2, 2005.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institute of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892-9609, 301-443-0004, sechu@mail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: June 14-15, 2005.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892-9606, 301-443-6470, dsommers@mail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Services Research Review Committee.

Date: June 15-16, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892-9608, 301-402-8152, mbroitma@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Building Translational Research in Behavioral Science.

Date: June 21, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892-9606, 301-443-1513, psherida@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9359 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bridges to the Doctorate.

Date: May 13, 2005.

Time: 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435-3566, cooperc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Musculoskeletal Rehabilitation Special Emphasis Panel.

Date: May 17, 2005.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, (301) 451-1327, tthyagar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

Date: June 6-7, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435-0682, perrinp@csr.nih.gov.

Name of Committee: Digestive Sciences Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.

Date: June 8-9, 2005.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174,

MSC 7818, Bethesda, MD 20892, (301) 435-1169, greenwep@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group, Cellular Signaling and Dynamics.

Date: June 9-10, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435-1022, ehrenspg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skin.

Date: June 10, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20584.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594-6376, ansaria@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Biology SBBR/STTR Applications.

Date: June 13, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435-1023, steinbem@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: June 14-15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435-1255, kenshalod@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: June 14, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892-7844, (301) 435-1119, mselmanoff@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.

Date: June 14, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435-1250, bishopj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Arthritis.

Date: June 14, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20584.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 594-6376, ansaria@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship Review: Sensory, Motor and Cognitive Neuroscience.

Date: June 15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435-1250, bishopj@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: June 15-16, 2005.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gerald L. Becker, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435-1170, beckerg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurobiology of Addiction I (ZRG1 IFCNA (03).

Date: June 15, 2005.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435-1713, melchioc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDP (01) Chemo/Dietary Prevention.

Date: June 15-17, 2005.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Sally A. Mulhern, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435-5877, mulherns@csr.nih.gov.

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.

Date: June 16-17, 2005.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435-1784, mcfarlag@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behavior Study Section.

Date: June 16-17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, (301) 435-1119, mselmanoff@csr.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Language and Communication Study Section.

Date: June 16-17, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip),

Bethesda, MD 20892, (301) 435-1507, niw@csr.nih.gov.

Name of Committee: Hematology Integrated Review Group, Hematopoiesis Study Section.

Date: June 16-17, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435-1195, sur@csr.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: June 16-17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 805 Russell Avenue, Gaithersburg, MD 20879.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435-1042, shaikha@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diet and Exercise Assessment Methods.

Date: June 16, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435-0695, hardyan@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

Date: June 16-17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, Pennsylvania Ave at 15th Street, NW., Washington, DC 20004.

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435-1248, jelsemac@csr.nih.gov.

Name of Committee: Biology of Development and Aging Integrated Review Group, Development-2 Study Section.

Date: June 16-17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, (301) 435-1034, ravindr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Basic Mechanism, of Cancer Therapeutics.

Date: June 16-17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451-0131, forryscs@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vaccines Against Microbial Diseases.

Date: June 16-17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Wang, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 435-2778, wangjia@csr.nih.gov.

Name of Committee: Center for Scientific Review and Special Emphasis Panel, Drug Discovery and Mechanisms of Antimicrobial Resistance.

Date: June 16-17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, (301) 435-2306, boundst@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransmitters, Receptors, and Calcium Signaling Study Section.

Date: June 16-17, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435-1239, guthriep@csr.nih.gov.

Name of Committee: Center for Scientific Review Emphasis Panel, Epi of Infectious,

Reproductive, Asthma, and Other Pulmonary Diseases (IRAP).

Date: June 16-17, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Sandra L. Melnick, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, (301) 435-1251, melnicks@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.

Date: June 16-17, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435-0912, levinv@csr.nih.gov.

Name of Committee: Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

Date: June 16-17, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435-1739, gangulyc@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.

Date: June 16-17, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Room 3126, Washington, DC 20037.

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435-2889, rileyann@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Risk and Disease Prevention Study Section.

Date: June 16-17, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435-8008, younghyd@csr.nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Biochemistry and Biophysics of Membranes Study Section.

Date: June 16-17, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435-1721, rakhitg@csr.nih.gov.

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Children and Families Study Section.

Date: June 16-17, 2005.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435-1017, helmersk@csr.nih.gov.

Name of Committee: Health of the Population Integrated Review Group, Biostatistical Methods and Research Design Study Section.

Date: June 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435-0695, hardyan@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Software Development and Maintenance.

Date: June 17, 2005.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, (301) 402-1074, rigasm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.

Date: June 17, 2005.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435-1739, gangulyc@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 4, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-9355 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Peptides Useful in the Treatment of Dyslipidemic and Vascular Disorders

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in Provisional Patent Application Serial No. 60/619,392 filed 10/15/2004, titled "Multi Domain Amphipathic Helical Peptides and Methods of Their Use" referenced at DHHS as E-114-2004/0-US-01, to Lipid Sciences, Inc., having a place of business in the state of California. The field of use may be limited to the therapeutic treatment of cardiovascular diseases. The United States of America is the assignee of the patent rights in this invention. The territory may be worldwide. This announcement is the first notice to grant an exclusive license to this technology.

DATES: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before July 11, 2005 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Fatima Sayyid, Technology Licensing Specialist, Office of

Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 435-4521; Facsimile: (301) 402-0220; e-mail: sayyidf@mail.nih.gov.

SUPPLEMENTARY INFORMATION: Clearance of excess cholesterol from cells by high density lipoproteins (HDL) is facilitated by the interaction of HDL apolipoprotein with cell surface binding sites or receptors such as ABCA1. ABCA1 is a member of the ATP binding cassette transporter family and is expressed by many cell types. Mutations in the ABCA1 transporter lead to diseases characterized by the accumulation of excess cellular cholesterol, low levels of HDL and an increased risk for cardiovascular disease. Research has demonstrated an inverse correlation between the occurrence of atherosclerotic events and levels of HDL and its most abundant protein constituent, apolipoprotein A-1 (apoA-1). ApoA-1 has been shown to promote lipid efflux from ABCA1 transfected cells. However the nature of the interaction between apoA-1 and ABCA1 is not fully understood. Several other exchangeable type apolipoproteins have been shown to efflux lipid from ABCA1 transfected cells. Although the exchangeable type apolipoproteins do not share a similar primary amino acid sequence, they all contain amphipathic helices, a structural motif known to facilitate the interaction of proteins with lipids. Recently, it has been shown in both animal models and humans that intravenous administration of apoA-1 can reduce the size of atherosclerotic plaques. It has also been observed that synthetic peptide mimics of apoA-1 can promote efflux of excess cholesterol from cells. Therefore, synthetic mimics of apoA-1 can potentially also be used as therapeutic compounds in the prevention and treatment of atherosclerosis.

Currently, there are a wide variety of treatments for dyslipidemia, which include, but are not limited to, pharmacologic regimens (mostly statins), partial ileal bypass surgery, portacaval shunt, liver transplantation, and removal of atherogenic lipoproteins by one of several apheresis procedures.

The subject provisional patent application is directed to the composition of peptides or peptide analogs with multiple amphipathic alpha-helical domains that promote lipid efflux from cells. It further relates to methods for identifying non-cytotoxic peptides that promote lipid efflux from cells that are useful in the treatment and prevention of dyslipidemic and vascular

disorders. Dyslipidemic and vascular disorders amenable to treatment with the isolated multi-domain peptides include, but are not limited to, hyperlipidemia, hyperlipoproteinemia, hypercholesterolemia, hypertriglyceridemia, HDL deficiency, apoA-I deficiency, coronary artery disease, atherosclerosis, thrombotic stroke, peripheral vascular disease, restenosis, acute coronary syndrome, and reperfusion myocardial injury.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 4, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05-9394 Filed 5-10-05; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Drug Testing Advisory Board on June 1-2, 2005.

A portion of the meeting will be open and will include a roll call, general announcements, a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and a Nuclear Regulatory Commission drug testing program update.

Attendance by the public will be limited to space available. Public comments are welcome. Please

communicate with the individual listed below as contact to make arrangements to comment or to request special accommodations for persons with disabilities.

The Board will also meet to develop the analytical and administrative policies for the final revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Program that were published as proposed revisions in the **Federal Register** on April 13, 2004 (69 FR 19673). The submissions from 285 commenters have been made available to the public on the Web site <http://workplace.samhsa.gov>. This meeting will be conducted in closed session since discussing such public comments in open session and then developing the policies will significantly frustrate the Department's ability to develop the final notice of revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. The HHS Office of General Counsel made the determination that such matters are protected by exemption 9(B) of section 552(b) of title 5 U.S.C. and therefore may be closed to the public.

To facilitate entering the building for the open session, public attendees are required to contact Mrs. Giselle Hersh, Division of Workplace Programs, 1 Choke Cherry Road, Room 2-1042, Rockville, MD 20857, 240-276-2605 (telephone) or by e-mail to Giselle.Hersh@samhsa.hhs.gov.

Substantive program information and a roster of Board members may be obtained by accessing the SAMHSA workplace Web site (<http://workplace.samhsa.gov>) or communicating with the contact whose name and telephone number are listed below. The transcript for the open session will be available on the SAMHSA workplace website as soon as possible after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration Drug Testing Advisory Board.

Meeting Date: June 1-2, 2005.

Place: SAMHSA Building, Sugarloaf Room, 1 Choke Cherry Road, Rockville, Maryland 20850.

Type:

Open: June 1, 2005; 8:30 a.m.-9:30 a.m.

Closed: June 1, 2005; 9:30 a.m.-4:30 p.m.

Closed: June 2, 2005; 8:30 a.m.-4:30 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, 1 Choke Cherry Road, Room 2-1033, Rockville, Maryland 20857, 240-276-2600 (telephone) and 240-276-2610 (fax), E-mail: Donna.Bush@samhsa.hhs.gov.

Dated: May 5, 2005.

Toian Vaughn,

Committee Management Officer, SAMHSA.
[FR Doc. 05-9375 Filed 5-10-05; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of a Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in June 2005.

The SAMHSA National Advisory Council will meet in an open session June 27 from 9 a.m. to 12:15 p.m., in San Diego, California. The meeting will include the SAMHSA Administrator's Report, discussions concerning issues on SAMHSA's appropriation and budget, and discussions on current administrative, legislative and program developments. The SAMHSA Council meeting will coincide with the Indian Health Services/SAMHSA Behavioral Health Conference which will be held on June 28 through June 30 in San Diego.

Attendance by the public at the SAMHSA Council meeting will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Council Web site, <http://www.samhsa.gov/council/council>, or by communicating with the contact whose name and telephone number are listed below. The transcript for the meeting will also be available on the SAMHSA Council Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

Date/Time: Monday, June 27, 2005, 9 a.m. to 12:15 p.m. (Open).

Place: Hyatt Regency Islandia Hotel and Marina, Islands Ballroom, 1441 Quivira Road, San Diego, California 92109.

Contact: Toian Vaughn, Executive Secretary, 1 Choke Cherry Road, Room 8-1089, Rockville, Maryland 20857, Telephone: (240) 276-2307; FAX: (240) 276-2252 and E-mail: toian.vaughn@samhsa.hhs.gov.

Dated: May 5, 2005.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 05-9376 Filed 5-10-05; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request; Revised Information Collection

ACTION: Request OMB emergency approval; Application To Replace Permanent Resident Card, Form I-90.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information request (ICR) utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. USCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. USCIS is requesting emergency review from OMB of this information collection to ensure compliance with the Enhanced Security and Visa Entry Reform Act of 2002 (BSA), 8 U.S.C. 1732(b)(1), which requires travel and entry documents to contain certain features. Emergency review and approval of this ICR ensures that the applicant may apply for this benefit utilizing the revised information collection.

Permanent residents must file Form I-90, Application to Replace Permanent Resident Card to renew or replace their Form I-551, Permanent Resident Card. The Form I-551 has many uses, one of which is as an entry document for permanent residents returning to the United States after a trip abroad. Effective October 26, 2004, section 303 of the BSA requires that travel and entry documents be machine readable, tamper resistant, and use biometric identifiers. To comply with the BSA, USCIS is amending the instructions to the Form I-90 to request applicants to appear at a USCIS Application Support Centers (ASCs) and provide USCIS with the necessary biometric information. Such information includes a photograph, signature and fingerprints. USCIS will

collect and store this biometric information electronically for production of a tamper-resistant Form I-551 in compliance with the BSA. Moreover, USCIS plans to maintain the information in a national database, enhancing national security and public safety. As a result, DHS anticipates that this will reduce the number of future visits applicants will be required to make to an ASC throughout the entire immigration process. In order to provide this service, USCIS will charge applicants a \$70 biometrics fee.

For the aforementioned reasons, the USCIS is requesting emergency OMB review and approval of this information collection request by May 23, 2005. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be direct to OMB, Office of Information and Regulatory Affairs, 725-17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer. During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, USCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until July 11, 2005. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Director, Regulatory Management Division (202) 272-8733, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revised information collection.

(2) *Title of the Form/Collection:* Application to Replace Permanent Resident Card.

(3) *Agency form number, if any, and the applicable component of Department of Homeland Security:* Form I-90 U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. This form is used by a permanent resident to obtain a replacement Form I-551 when: the previous card has been lost, stolen, destroyed, or mutilated; the existing card will be expiring within 6 months; the bearer's name or other biographic existing card will be expiring within 6 months; the bearer's name or other biographic information has been legally changed; the applicant is taking up actual U.S. residence after having been a commuter or is permanent resident taking up commuter status; the applicant has been automatically converted to permanent resident status; the previous card was issued but never received; the bearer of the card reached the age of 14 years, unless the existing card will expire prior to the bearer's 16th birthday; or the existing card bears incorrect data on account of USCIS error. The Form I-551 serves as evidence of registration, status, identity, and employment authorization, and may be used to return to the United States after a trip abroad. This information collection amends the instructions to the Form I-90 to direct applicants to file the form at the California Lockbox address, pay a biometric capture fee of \$70 in addition to the application fee when filing the form, and appear at an ASC for biometric capture and the submission of initial evidence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 55 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 916,000 annual burden hours.

If you have comments, suggestions, or need a copy of the draft form, please visit the USCIS Web site at <http://>

www.uscis.gov. Also you may contact: Director, Regulatory Management Division, (202) 272-8377, United States Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

Dated: May 6, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
United States of Homeland Security, U.S.
Citizenship and Immigration Services.*

[FR Doc. 05-9460 Filed 5-9-05; 2:18 pm]

BILLING CODE 4410-10-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4950-C-34]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; correction.

SUMMARY: On March 21, 2005 HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. This document makes a correction to the Rural Housing and Economic Development Program.

DATES: The application submission date for the Rural Housing and Economic Development Program is May 17, 2005.

FOR FURTHER INFORMATION CONTACT: For information concerning the HUD Rural Housing and Economic Development program, contact Mr. Thann Young, Program Specialist, or Ms. Linda L. Streets, Community Development Specialist, Office of Rural Housing and Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7137, Washington, DC 20410-7000; telephone 202-708-2290 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for

HUD's Discretionary Grant Programs. The FY2005 SuperNOFA announced the availability of approximately \$2.26 billion in HUD assistance. This notice published in today's **Federal Register** makes a technical correction to the Rural Housing and Economic Development Program.

Rural Housing and Economic Development [70 FR 14012]

On page 14017, in the third column of the table, HUD reported that applications were to be submitted on May 20, 2005, however, consistent with Appendix A of the General Section at page 13597 and page 14013, section F, first column of this program section, the actual date is May 17, 2005.

Accordingly, in the Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs, beginning at 70 FR 13575, in the issue of March 21, 2005, the following correction is made.

Rural Housing and Economic Development, beginning at page 14012: On page 14017, in the third column of the table, remove the date, May 20, 2005 and add in its place the date, May 17, 2005.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 05-9420 Filed 5-10-05; 8:45 am]

BILLING CODE 4210-32-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4950-N-1A]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Notice of Additional Guidance to Applicants

AGENCY: Office of the Secretary, HUD.

ACTION: Super notice of funding availability (SuperNOFA) for HUD Discretionary Grant Programs; additional guidance to applicants.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. This guidance concerns the program NOFAs in the SuperNOFA that require electronic application submission via Grants.gov, but does not affect the application packages on Grants.gov.

This notice also provides guidance to applicants experiencing difficulty using

Form HUD 96010, Logic Model in the form fillable, savable version on Grants.gov, and voluntary SF 424 Supplement, Survey on Ensuring Equal Opportunity for Applicants.

DATES: The application submission dates for all other program sections of the SuperNOFA remain as published in the **Federal Register** on March 21, 2005, with the exception of the Supportive Housing for Persons with Disabilities Program as contained in FR-4950-C-20 published in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information on this Notice please contact Dorthera (Rita) Yorkshire or Eric Gauff in HUD's Office of Departmental Grants Management and Oversight at (202) 708-0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The FY2005 SuperNOFA announced the availability of approximately \$2.26 billion in HUD assistance. This notice published in today's **Federal Register** provides further guidance to applicants on completing certain forms as part of their application submission via Grants.gov.

Applicant Guidance

HUD is providing the following clarifications and guidance on how to submit the HUD 96010, Logic Model and SF 424 Supplement, Survey on Equal Opportunity for Applicants.

Applicants that experience difficulty with the form fillable, savable version of the form HUD 96010, Logic Model, may follow any one of the following options:

1. Complete the HUD-96010 Logic Model, Word version form available on HUD's Web site at <http://www.hud.gov/offices/adm/grants/nofa05/snofaforms.cfm>, save it following the directions in the General Section for Word format files and then attach the completed form to the Grants.gov application submission using the attachment form in the application package; or

2. Applicants that do not use Microsoft Word software may create their own equivalent form and then, using form HUD 96011, Facsimile Transmittal, and following the instructions in the General Section of the SuperNOFA published on March 21,

2005, fax the completed Logic Model information to the HUD number provided in the General Section; or

3. Applicants may continue to use the form fillable, savable form found in the application package.

Applicants are reminded that the Logic Model completed with their application is to be an Executive Summary of the activities, outputs, and outcomes in the application, not a long narrative or a repetition of the narratives provided elsewhere in the application. The training on the Logic Model emphasized the need to provide the key elements of the proposed program in the Logic Model form. The Logic Model training may be accessed from HUD's Web site at <http://www.hud.gov/webcasts/archives/supernofoa05.cfm>.

Applicants are also advised that a Department of Education form was incorrectly included as part of the application packages on Grants.gov instead of the SF 424 Supplement, Ensuring Equal Opportunity for Applicants form listed in HUD program NOFAs. Applicants that wish to complete the SF 424 Supplement form should obtain a copy of the correct form from HUD's Web site at <http://www.hud.gov/offices/adm/grants/nofa05/snofaforms.cfm>. Applicants may use the Word format version of the form and submit as an attached file to the application, in accordance with the instructions in the General Section for saving Word format documents. In the alternative, applicants may use the PDF version of this form and either scan it and submit it as an attached file with the application or submit it by facsimile using the form HUD 96011 Facsimile Transmittal as described in the General Section instructions.

To assist applicants in preparing and submitting their application packages via Grants.gov, HUD encourages applicants to utilize the Frequently Asked Questions pages on the Grants.gov Web site and HUD's Web site. Frequently asked questions on the Grants.gov Web site can be found at <http://grants.gov/ForApplicants#>. Look for Tips and Tools. Frequently asked questions can be found on the HUD Web site at: <http://www.hud.gov/offices/adm/grants/egrants/grantsgovfaqs.pdf>

Dated: May 5, 2005.

Darlene Williams,

Deputy Assistant, Secretary for Administration.

[FR Doc. E5-2310 Filed 5-10-05; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4826-N-04]

Notice of Availability of Alternative Fuel Vehicle Reports

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of availability of reports.

SUMMARY: Through this notice, HUD is making available on its Web site, a copy of HUD's Alternative Fuel Vehicles Report for Fiscal Year 2004 that was prepared in accordance with the Energy Policy Act of 1992.

FOR FURTHER INFORMATION CONTACT:

Robert E. Byrd, Jr., Director, Facilities Management Division, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000, at (202) 708-1955 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service number at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Energy Policy Act (42 U.S.C. 13201 *et seq.*) (the Act) establishes a comprehensive plan to achieve economic, energy and environmental benefits by promoting the use of alternative fuels. A major goal of the Act is to have the Federal government exercise leadership in the use of alternative fuel vehicles. To that end, the Act established alternative fuel vehicle purchasing requirements for the Federal fleets of government agencies, and requires Federal agencies to report on their compliance with the requirements of the Act. A copy of HUD's Alternative Fuel Vehicle Reports can be obtained via the World Wide Web at <http://www.hud.gov/offices/adm/reports/admreports.cfm>.

Dated: May 6, 2005.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. E5-2309 Filed 5-10-05; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668_05_1610_PG_083A1]

Santa Rosa and San Jacinto Mountains National Monument Call for Public Nominations for National Monument Advisory Committee

AGENCIES: Bureau of Land Management and U.S. Forest Service.

ACTION: Notice of correction.

SUMMARY: Bureau of Land Management and U.S. Forest Service jointly published notice in the **Federal Register**, March 22, 2005, listing an incorrect expiration date.

FOR FURTHER INFORMATION CONTACT:

Frank Mowry, Writer-Editor, (760) 251-4822.

Correction: In the **Federal Register** of March 22, 2005, in FR Doc. 05-5453, on page 14481, first column, correct the expiration date in paragraph two, it should read:

This notice is an open request for the public to submit nominations applications for the five (5) National Monument Advisory Committee (MAC) positions, which will be open with the expiration of current members' terms in July 2006.

Dated: April 11, 2005.

Gail Acheson,

BLM, Palm Springs Field Office Manager.

Dated: April 13, 2005.

Laurie Rosenthal,

USFS, District Ranger.

Dated: April 11, 2005.

Danella George,

National Monument Manager.

[FR Doc. 05-9380 Filed 5-10-05; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 9, 2005.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning

the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by May 26, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

California

Alameda County

Panoramic Hill, Panoramic Wy, Canyon Rd., Mosswood, Orchard Ln., Arden Rd., Berkeley, 05000424

Colorado

Alamosa County

First Baptist Church, (Ornamental Concrete Block Buildings in Colorado MPS) 408 State Ave., Alamosa, 05000425

El Paso County

Shove Memorial Chapel, (Colorado College MPS) 1010 N. Tejon St., Colorado Springs, 05000426

Georgia

Forsyth County

Cumming Cemetery, Bordered by GA 20, GA 9 and Resthaven Dr., Cumming, 05000428

Lowndes County

East End Historic District, NE of downtown Valdosta roughly bounded by North Ashley and E. Ann Sts., East Hill Ave., and Georgia and Florida RR, Valdosta, 05000427

Illinois

Cook County

Des Plaines Methodist Camp Ground, 1250 Campground Rd., Des Plaines, 05000429

Crawford County

Robinson High School Auditorium—Gymnasium, 200 Blk of E. Highland Ave., Robinson, 05000434

Lee County

Wright, Stephen, House, 612 Chicago Rd., Paw Paw, 05000433

Madison County

Collinsville Masonic Temple Lodge #712 A.F. & A.M., 213 W. Clay St., Collinsville, 05000430

Menard County

Rogers, Col. Matthew, Building, 200 S. Main St., Athens, 05000431

Rock Island County

Villa de Chantal Historic District, 2101 16th Ave., Rock Island, 05000432

Minnesota

Hennepin County

Minneapolis Fire Department Repair Shop, 24 University Ave. NE and 222 First Ave. NE, Minneapolis, 05000447

St. Louis County

Sacred Heart Cathedral, Sacred Heart School and Christian Brothers (Boundary Increase), 315 N 2nd Ave. W, Duluth, 05000446

New Mexico

San Miguel County

Conchas Dam Historic District, Roughly bounded the State Park South Area, State Park North Area, Conchas Reservoir and Bell Ranch, Conchas Dam, 05000454

New York

Albany County

Knox District School No. 5, Ketchum Rd., Knox, 05000441

Erie County

Saturn Club, 977 Delaware Ave., Buffalo, 05000444

New York County

Actors Temple, 339 W. 47th St., New York, 05000445

Guggenheim, Solomon R., Museum, 1071 Fifth Ave., New York, 05000443

Onondaga County

Elmwood Park, (Historic Designed Landscapes of Syracuse MPS) Glenwood Ave., South Ave., City Boundary, Syracuse, 05000439

Rensselaer County

Sharpe Homestead and Cemetery, 44 Laura Ln., Defreestville, 05000440

Washington County

South Granville Congregational Church and Parsonage, 7179 NY 149, Granville, 05000442

North Carolina

Catawba County

Kenworth Historic District (Boundary Increase), Roughly along Fifth St. SE, Fifth Ave. SE, third Avenue Dr. SE, and Second Ave. SE, Hickory, 05000435

Chowan County

Moore, Susan J. Armistead, house, NC 32, 0.25 mi. W od jct. with NC 37, Edenton, 05000436

Guilford County

Summerfield Historic District, 4105-4210 Oak Ridge Rd. and 7702-7804 Summerfield Rd., Summerfield, 05000437

Rowan County

McCanless, Walter, House, 200 Confederate Ave., Salisbury, 05000452

Warren County

Liberia School, 4.5 mi. S of Warrenton, Sw side of NC 58, Wareenton, 05000438

Oregon

Multnomah County

Anderson, Emanuel and Christina, House, 1420 SE Roberts Ave., Gresham, 05000448

Pennsylvania

Berks County

First National Bank in Fleetwood, Main and Franklin St., Fleetwood, 05000449

Lancaster County

Furnace Hills Tenant House, Unpaved Rd approx. 500 ft. E of Project Dr., West Cocalico Township, 05000451

Northampton County

Illick's Mill, 130 Illick's Mill Rd., Bethlehem, 05000450

Wisconsin

Rock County

Columbus Circle Historic District, Columbus Circle generally bounded by N. Adams and E. Milwaukee Sts. and N. Garfield Ave., Janesville, 05000453

A request for *removal* has been made for the following resource:

Minnesota

Pine County

Bridge No. 1811 over Kettle River (Iron and Steel Bridges of Minnesota MPS) Co. Hwy 33 over Kettle River, Rutledge vicinity, 98001107

[FR Doc. 05-9338 Filed 5-10-05; 8:45 am]

BILLING CODE 4312-51-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 16, 2005. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202-371-6447. Written

or faxed comments should be submitted by May 26, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Arkansas

Benton County

Springfield to Fayetteville Road—Elkhorn Tavern Segment, (Cherokee Trail of Tears MPS) NW of Elkhorn Tavern within Pea Ridge National Park, Garfield, 05000484

Johnson County

Dover to Clarksville Road —Hickeytown Road Segment, (Cherokee Trail of Tears MPS) Hickeytown Rd. E of U.S. 64, Lamar, 05000464

Randolph County

Campbell Cemetery, Address Restricted, Imboden, 05000463

Maryland

Baltimore Independent City

Rombro Building, (Cast Iron Architecture of Baltimore MPS) 22–24 S. Howard St., Baltimore (Independent City), 05000485

Massachusetts

Barnstable County

Coast Guard Moto Lifeboat CG 36500, berthed at Rock Harbor, Orleans, 05000467

Essex County

River Road—Cross Street Historic District, (Farms and Rural Retreats of Topsfield, Massachusetts MPS) Cross, Prospect Sts., River, Salem Rds., Topsfield, 05000465

Middlesex County

Higginson, Henry, House, 44 Baker Farm Rd., Lincoln, 05000468

Sweetser, Warren, House, (Stoneham MRA) 90 Franklin St., Stoneham, 05000466

Missouri

Greene County

Finkbiner Building, (Springfield, Missouri MPS AD) 509–513 W. Oliver St., Springfield, 05000469

Nevada

Humboldt County

Winnemucca, 95 S. Bridge St., Winnemucca, 05000471

Washoe County

Miller-Rowe—Hogate House, 18 Winter St., Reno, 05000470

Virginia

Albemarle County

Pantops Farm, 400 Peter Jefferson St., Charlottesville, 05000483

Harrisonburg Independent City

Whitesel Brothers, 131 W. Grace St., Harrisonburg (Independent City), 05000472

Henry County

Spencer—Penn School, 30 George Taylor Rd., Spencer, 05000482

Loudoun County

Taylorstown Historic District (Boundary Increase), 13122 Furnace Mountain, 13090 Taylorstown, 12969 Taylorstown, 12995 Hoysville, and 13000 Hoysville Rds., Taylorstown, 05000474

Petersburg Independent City

North Battersea—Pride's Field Historic District, Roughly along the Appomattox River bank, McKenzie, W. High., Upper Appomattox Sts., from 1250 W. High to Fleet Sts., Petersburg (Independent City), 05000475

Pittsylvania County

Woodlawn, 5321 Henrys Mill Rd., Vernon Hill, 05000478

Pulaski County

Rockwood, 5189 Rockwood Dr., Dublin, 05000473

Richmond Independent City

Southern Stove Works, 1215 Hermitage Rd., Richmond (Independent City), 05000480

Rockingham County

Massanetta Springs Historic District, 712 Massanetta Springs RD., Harrisonburg, 05000477

Salem Independent City

Preston House, 1936 W. Main St., Salem (Independent City), 05000479

Westmoreland County

Kinsale Historic District, Roughly along Kinsale Rd, Kinsale Bridge Rd., Sigouney Dr., Great House Rd., and Yeocomico Ln., Kinsale, 05000476

Wythe County

Graham's Forge Mill, VA 639, Max Meadows, 05000481

[FR Doc. 05–9339 Filed 5–10–05; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310, 520, and 521 (Second Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe

fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 4, 2005.

FOR FURTHER INFORMATION CONTACT:

Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On March 7, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 14713, March 23, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on August 16, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these reviews beginning at 9:30 a.m. on September 7, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 30, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 1, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 25, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 16,

2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 6, 2005. On October 6, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 11, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 5, 2005.

By order of the Commission.

Marilyn R. Abbot, *Secretary to the Commission.*

[FR Doc. 05-9347 Filed 5-10-05; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: 2005 census of jail inmates.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 70, number 41, page 10413 on March 3, 2005, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information

Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2005 Census of Jail Inmates.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: CJ3-I. Bureau of Justice Statistics (BJA), Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* County and City Jail Authorities, and Tribal Authorities. *Other:* Federal Government, and Private Contractors working under the authority of the Federal Government. The 2005 Census of Jail Inmates, together with the 2005 Census of Jail Facilities, is the foundation for all national statistics on local jails and inmates. These censuses provide the frames from which to generalize to the nation and to track changes over time. Without a periodic census, sample surveys would be unreliable, and statistics would be based on a group of jails of unknown representativeness, that were simply convenient to contact and willing to respond. These censuses provide a benchmark against which jurisdictions may compare their correctional populations. Administrators use this data to evaluate their staffing and budget needs relative to similarly situated jail jurisdictions. Practitioners, policy makers, and researchers are able to test assertions and conclusions about the causes and consequences of current sentencing release policies. Finally, the censuses present raw material for discussion and evaluation of correctional policies and practices throughout the nation, in some States providing the only sources of objective descriptions of the operation of local jails.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* BJA estimates 3,084 respondents, each taking an average of 80 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,112 total annual burden hours associated with the collection.

If additional information is required contact: Brenda E. Dyer, Department

Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 5, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-9343 Filed 5-10-05; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: national prisoner statistics, summary of sentenced population movement.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 70, number 41, page 10412 on March 3, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 10, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:*

National Prisoner Statistics, Summary of Sentenced Population Movement

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: NPS-1. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* For the NPS-1 form, 51 central reporters (one from each State and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide prison admission information for the following categories: New court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLs and escapees returned, and returns from appeal and bond. Respondents will also be asked to provide prison release information for the following categories: Expirations of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLs, escapes, transfers to other jurisdictions, and releases to appeal or bond. In addition, respondents will be asked for data on jurisdictional and custody populations at yearend by gender for inmates with over 1 year maximum sentence, and inmates with a year or less maximum sentence; for information on the number of state inmates housed in facilities operated by a county or other local authority on December 31 to ease prison crowding; the number of state inmates housed in a privately operated

correctional facility; inmates on December 31 by race and Hispanic origin; testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* BJS estimates 51 respondents will respond to the collection. It will take the average respondent approximately 6.5 hours to respond to the information collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual burden hours associated with this information collection is 332.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 5, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05-9344 Filed 5-10-05; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: Under Title I of the Workforce Investment Act of 1998 (Pub. L. 105-220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL) for uses described in the Law. WIA defines the term "Low Income Individual" as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level. This issuance provides the Secretary's annual LLSIL for 2005 and references the current 2005

Health and Human Services "Poverty Guidelines."

DATES: *Effective Date:* This notice is effective on date of publication in the **Federal Register**.

ADDRESSES: Send written comments to: Ms. Libby Queen, Employment and Training Administration, Department of Labor, Room N-4464, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Libby Queen, Telephone 202-693-3607; Fax 202-693-3532 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 (WIA) "to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation."

The LLSIL is used for several purposes under WIA: specifically, WIA Section 101(25) defines the term "low income individual" for eligibility purposes, Sections 127(b)(2)(C) and 132(b)(1)(V)(IV) define the terms "disadvantaged youth," and "disadvantaged adult" in terms of the poverty line or LLSIL for purposes of State formula allotments. The Governor and State/Local Workforce Investment Boards use the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services, and for the Work Opportunity Tax Credit (WOTC). We encourage the Governors and State/local Workforce Investment Boards to consult WIA and its regulations and the preamble to the WIA Final Rule (published at 65 FR 49294 (August 11, 2000)) *et al.*, for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services published the annual 2005 update of the poverty-level guidelines in the **Federal Register** at 70 FR 8373-8375, (Feb. 18, 2005). The HHS 2005 Poverty guidelines may also be found on the Internet at: <http://aspe.hhs.gov/poverty/05fedreg.html>.

ETA plans to have the 2005 LLSIL available on its Web site at: <http://www.doleta.gov/llsil/>.

WIA Section 101(24) defines the LLSIL as "that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the

Secretary." The most recent lower living family budget was issued by the Secretary of Labor in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently BLS provides data to ETA, from which it develops the LLSIL tables.

ETA published the 2004 updates to the LLSIL in the **Federal Register** of June 25, 2004, at 69 FR 35679. This notice again updates the LLSIL to reflect cost of living increases for 2004, by applying the percentage change in the December 2004 Consumer Price Index for All Urban Consumers (CPI-U), compared with the December 2003, CPI-U, to each of the June 25, 2004 LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Figures in all of the accompanying tables are rounded up to the nearest ten. Since "low income individual," "disadvantaged adult," and "disadvantaged youth" may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections, 101(25), 127(b)(2)(C) and 132(b)(1)(B)(v)(IV), respectively, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

Midwest

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama

American Samoa
 Arkansas
 Delaware
 District of Columbia
 Florida
 Georgia
 Northern Marianas
 Oklahoma
 Palau
 Puerto Rico
 South Carolina
 Kentucky
 Louisiana
 Marshall Islands
 Maryland
 Micronesia
 Mississippi
 North Carolina
 Tennessee
 Texas
 Virginia
 West Virginia

West

Arizona
 California
 Colorado
 Idaho
 Montana
 Nevada
 New Mexico
 Oregon
 Utah
 Washington
 Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the year 2005 figures were updated from the June 25, 2004, "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional

metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on semiannual CPI-U changes for a 12-month period ending in December 2004. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Table 3 below.

Table 4 below lists each of the various figures at 70 percent of the updated 2005 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. Table 5, 100 percent of LLSIL, is used to determine self-sufficiency as noted at 20 CFR 663.230 of WIA Regulations and WIA section 134(d)(3)(A)(ii).

Use of These Data

Governors should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Tables 4 and 5 may be used with any of the levels designated. The Governor's designation may be provided by disseminating information on Metropolitan Statistical Areas (MSAs) and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures: for Northeast

metropolitan, for Northeast nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used.

Under 20 CFR 661.110, a State's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with the WIA and the WIA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI-U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI-U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under the WIA as defined in the law and regulations.

Signed at Washington, DC, this 3rd day of May 2005.

Gay Gilbert,

Administrator, Office of Workforce Investment.

Attachments.

BILLING CODE 4510-30-P

Table 1: Lower Living Standard Income Level (for a family of four persons) by Region¹

Region ²	2004 Adjusted LLSIL	2005 Factor	2005 Adjusted LLSIL	70 percent LLSIL
Northeast				
Metro	\$ 32,640	1.036	\$ 33,820	\$ 23,680
Non-Metro ³	\$ 31,370	1.03	\$ 32,320	\$ 22,620
Midwest				
Metro	\$ 29,720	1.03	\$ 30,620	\$ 21,430
Non-Metro	\$ 27,860	1.034	\$ 28,810	\$ 20,170
South				
Metro	\$ 28,050	1.033	\$ 28,980	\$ 20,290
Non-Metro	\$ 26,520	1.039	\$ 27,560	\$ 19,290
West				
Metro	\$ 32,130	1.032	\$ 33,160	\$ 23,220
Non-Metro ⁴	\$ 31,140	1.028	\$ 32,020	\$ 22,410

¹For ease of use, these figures have been rounded to the next highest ten dollars.

²Metropolitan area measures were calculated from the weighted average CPI-Us for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI-Us for city size class D.

³Nonmetropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI-U for city size Class D.

⁴Non-metropolitan area percent changes for the West region are unpublished data.

Table 2: Lower Living Standard Income Level (for a family of four persons) -- Alaska, Hawaii and Guam¹

Region	2004 Adjusted LLSIL	2005 Factor	2005 Adjusted LLSIL	70 percent LLSIL
Alaska				
Metro	\$ 39,920	1.023	\$ 40,840	\$ 28,590
Non-Metro ²	\$ 39,080	1.028	\$ 40,180	\$ 28,130
Hawaii, Guam				
Metro	\$ 40,550	1.033	\$ 41,890	\$ 29,330
NonMetro ²	\$ 41,730	1.028	\$ 42,900	\$ 30,030

¹Rounded to next highest ten dollars.

²Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI-Us for city size Class D in the Western Region.

Table 3: Lower Living Standard Income Level (for a family of four persons) 23 MSAs¹

Metropolitan Statistical Areas (MSAs)	2004 Adjusted LLSIL	2005 Factor	2005 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	\$ 39,920	1.023	\$ 40,840	\$ 28,590
Atlanta, GA	\$ 28,230	1.019	\$ 28,770	\$ 20,140
Boston--Brockton--Nashua, MA/NH/ME/CT	\$ 36,330	1.021	\$ 37,100	\$ 25,970
Chicago--Gary--Kenosha, IL/IN/WI	\$ 31,320	1.025	\$ 32,110	\$ 22,480
Cincinnati--Hamilton, OH/KY/IN	\$ 29,880	1.017	\$ 30,390	\$ 21,280
Cleveland--Akron, OH	\$ 30,630	1.031	\$ 31,580	\$ 22,110
Dallas--Ft. Worth, TX	\$ 27,340	1.018	\$ 27,840	\$ 19,490
Denver--Boulder--Greeley, CO	\$ 31,760	1.009	\$ 32,050	\$ 22,440
Detroit--Ann Arbor--Flint, MI	\$ 29,410	1.02	\$ 30,000	\$ 21,000
Honolulu, HI	\$ 40,550	1.033	\$ 41,890	\$ 29,330
Houston--Galveston--Brazoria, TX	\$ 26,100	1.034	\$ 26,990	\$ 18,900
Kansas City, MO/KS	\$ 28,950	1.024	\$ 29,650	\$ 20,760
Los Angeles--Riverside--Orange County, CA	\$ 32,920	1.041	\$ 34,270	\$ 23,990
Milwaukee--Racine, WI	\$ 29,660	1.017	\$ 30,170	\$ 21,120
Minneapolis--St. Paul, MN/WI	\$ 30,110	1.03	\$ 31,020	\$ 21,710
New York--Northern NJ--Long Island, NY/NJ/CT/PA	\$ 34,240	1.036	\$ 35,480	\$ 24,840
Philadelphia--Wilmington--Atlantic City, PA/NJ/DE/MD	\$ 31,370	1.047	\$ 32,850	\$ 23,000
Pittsburgh, PA	\$ 29,880	1.211	\$ 36,190	\$ 25,330
St. Louis, MO/IL	\$ 28,370	1.04	\$ 29,510	\$ 20,660
San Diego, CA	\$ 35,970	1.037	\$ 37,310	\$ 26,120
San Francisco--Oakland--San Jose, CA	\$ 34,860	1.018	\$ 35,490	\$ 24,850
Seattle--Tacoma--Bremerton, WA	\$ 35,450	1.012	\$ 35,880	\$ 25,120
Washington--Baltimore, DC/MD/VA/WV ²	\$ 34,490	1.032	\$ 35,600	\$ 24,920
¹ Rounded to next highest ten dollars.				
² Baltimore and Washington are now calculated as a single metropolitan statistical area.				

Table 4 - Seventy Percent of Updated 2005 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, individuals must begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. Individuals must locate their region or metropolitan statistical area and then find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult the table below.

To use Table 4, locate the seventy percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the "family of four" column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure is indicated in a shaded block. Individuals from these size families may consult the 2005 HHS poverty guidelines found in the Federal Register, Vol. 70, No. 33, February 18, 2005, pp. 8373-8375 (on the Internet at <http://www.aspe.hhs.gov/poverty/05fedreg.htm>) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
\$ 6,810	\$ 11,160	\$ 15,310	\$ 18,900	\$ 22,310	\$ 26,090
\$ 6,950	\$ 11,390	\$ 15,630	\$ 19,290	\$ 22,770	\$ 26,630
\$ 7,020	\$ 11,500	\$ 15,790	\$ 19,490	\$ 23,000	\$ 26,900
\$ 7,260	\$ 11,890	\$ 16,320	\$ 20,140	\$ 23,770	\$ 27,800
\$ 7,270	\$ 11,910	\$ 16,340	\$ 20,170	\$ 23,810	\$ 27,840
\$ 7,310	\$ 11,980	\$ 16,440	\$ 20,290	\$ 23,950	\$ 28,010
\$ 7,440	\$ 12,190	\$ 16,740	\$ 20,660	\$ 24,380	\$ 28,520
\$ 7,480	\$ 12,250	\$ 16,820	\$ 20,760	\$ 24,500	\$ 28,650
\$ 7,560	\$ 12,390	\$ 17,010	\$ 21,000	\$ 24,780	\$ 28,980
\$ 7,610	\$ 12,470	\$ 17,110	\$ 21,120	\$ 24,930	\$ 29,150
\$ 7,670	\$ 12,560	\$ 17,240	\$ 21,280	\$ 25,120	\$ 29,370
\$ 7,720	\$ 12,650	\$ 17,360	\$ 21,430	\$ 25,290	\$ 29,580
\$ 7,820	\$ 12,810	\$ 17,590	\$ 21,710	\$ 25,620	\$ 29,960
\$ 7,960	\$ 13,050	\$ 17,910	\$ 22,110	\$ 26,090	\$ 30,520
\$ 8,070	\$ 13,230	\$ 18,160	\$ 22,410	\$ 26,450	\$ 30,930
\$ 8,080	\$ 13,240	\$ 18,180	\$ 22,440	\$ 26,480	\$ 30,970
\$ 8,100	\$ 13,270	\$ 18,210	\$ 22,480	\$ 26,530	\$ 31,030
\$ 8,150	\$ 13,350	\$ 18,330	\$ 22,620	\$ 26,700	\$ 31,220
\$ 8,280	\$ 13,570	\$ 18,630	\$ 23,000	\$ 27,140	\$ 31,740
\$ 8,360	\$ 13,700	\$ 18,810	\$ 23,220	\$ 27,400	\$ 32,050
\$ 8,530	\$ 13,980	\$ 19,190	\$ 23,680	\$ 27,950	\$ 32,680
\$ 8,640	\$ 14,160	\$ 19,440	\$ 23,990	\$ 28,310	\$ 33,110
\$ 8,950	\$ 14,660	\$ 20,130	\$ 24,840	\$ 29,320	\$ 34,280
\$ 8,950	\$ 14,670	\$ 20,130	\$ 24,850	\$ 29,330	\$ 34,300
\$ 8,980	\$ 14,710	\$ 20,190	\$ 24,920	\$ 29,410	\$ 34,390
\$ 9,050	\$ 14,830	\$ 20,350	\$ 25,120	\$ 29,650	\$ 34,670
\$ 9,120	\$ 14,950	\$ 20,520	\$ 25,330	\$ 29,890	\$ 34,960
\$ 9,350	\$ 15,330	\$ 21,040	\$ 25,970	\$ 30,650	\$ 35,840
\$ 9,410	\$ 15,420	\$ 21,160	\$ 26,120	\$ 30,830	\$ 36,050
\$ 10,130	\$ 16,600	\$ 22,790	\$ 28,130	\$ 33,200	\$ 38,820
\$ 10,300	\$ 16,870	\$ 23,160	\$ 28,590	\$ 33,740	\$ 39,460
\$ 10,560	\$ 17,310	\$ 23,760	\$ 29,330	\$ 34,610	\$ 40,480
\$ 10,820	\$ 17,720	\$ 24,330	\$ 30,030	\$ 35,440	\$ 41,450

Table 5 - Updated 2005 LLSIL (100%), By Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the state or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. The individual must locate their region or metropolitan statistical area and then find the 2005 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

	Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six			
	\$ 9,720	\$15,930	\$21,870	\$26,990	\$31,850	\$37,250			
	\$ 9,930	\$16,270	\$22,330	\$27,560	\$32,530	\$38,040			
	\$10,030	\$16,430	\$22,560	\$27,840	\$32,860	\$38,420			
	\$10,360	\$16,980	\$23,310	\$28,770	\$33,950	\$39,710			
	\$10,380	\$17,000	\$23,340	\$28,810	\$34,000	\$39,760			
	\$10,440	\$17,100	\$23,480	\$28,980	\$34,200	\$40,000			
	\$10,630	\$17,420	\$23,910	\$29,510	\$34,830	\$40,730			
	\$10,680	\$17,500	\$24,020	\$29,650	\$34,990	\$40,920			
	\$10,800	\$17,700	\$24,300	\$30,000	\$35,400	\$41,400			
	\$10,870	\$17,810	\$24,440	\$30,170	\$35,610	\$41,640			
	\$10,950	\$17,940	\$24,620	\$30,390	\$35,870	\$41,940			
	\$11,030	\$18,070	\$24,810	\$30,620	\$36,140	\$42,260			
	\$11,170	\$18,310	\$25,130	\$31,020	\$36,610	\$42,810			
	\$11,370	\$18,640	\$25,580	\$31,580	\$37,270	\$43,590			
	\$11,530	\$18,900	\$25,940	\$32,020	\$37,790	\$44,190			
	\$11,540	\$18,910	\$25,970	\$32,050	\$37,820	\$44,230			
	\$11,560	\$18,950	\$26,010	\$32,110	\$37,890	\$44,320			
	\$11,640	\$19,070	\$26,180	\$32,320	\$38,140	\$44,610			
	\$11,830	\$19,390	\$26,610	\$32,850	\$38,770	\$45,340			
	\$11,940	\$19,570	\$26,860	\$33,160	\$39,130	\$45,770			
	\$12,180	\$19,960	\$27,400	\$33,820	\$39,910	\$46,680			
	\$12,340	\$20,220	\$27,760	\$34,270	\$40,440	\$47,300			
	\$12,780	\$20,940	\$28,740	\$35,480	\$41,870	\$48,970			
	\$12,780	\$20,940	\$28,750	\$35,490	\$41,880	\$48,980			
	\$12,820	\$21,010	\$28,840	\$35,600	\$42,010	\$49,130			
	\$12,920	\$21,170	\$29,070	\$35,880	\$42,340	\$49,520			
	\$13,030	\$21,360	\$29,320	\$36,190	\$42,710	\$49,950			
	\$13,360	\$21,890	\$30,060	\$37,100	\$43,780	\$51,200			
	\$13,440	\$22,020	\$30,230	\$37,310	\$44,030	\$51,490			
	\$14,470	\$23,710	\$32,550	\$40,180	\$47,420	\$55,450			
	\$14,710	\$24,100	\$33,090	\$40,840	\$48,200	\$56,360			
	\$15,090	\$24,720	\$33,940	\$41,890	\$49,440	\$57,810			
	\$15,450	\$25,320	\$34,750	\$42,900	\$50,630	\$59,210			

DEPARTMENT OF LABOR**Bureau of Labor Statistics****Labor Research Advisory Council;
Notice of Meetings and Agenda**

The Spring meetings of committees of the Labor Research Advisory Council will be held on June 6, 7, and 8, 2005. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, June 6, 2005

1:30 p.m.—Committee on Productivity, Technology and Growth—Room 10

1. Industry labor productivity updates plan and improvement initiatives.
2. Productivity and costs measures for new service industries.
3. High Technology Employment: A North American Industry Classification System (NAICS)-based update.
4. Discussion of topics for the next meeting.

Committee on Foreign Labor Statistics—Room 10

1. Update on employment and compensation data for China.
2. NAICS conversion of hourly compensation costs in manufacturing component industries.
3. Current international technical cooperation activities.
4. Discussion of topics for the next meeting.

Tuesday, June 7, 2005

9:30 a.m.—Committee on Employment and Unemployment Statistics—Room 10

1. Evaluation of BLS employment measures by the Federal Economic Statistics Advisory Committee—request for LRAC recommendation for research or options to explore for improving BLS measures.
2. Current Employment Statistics survey planned revisions—final decision on proposal to measure all employee earnings and drop women workers.
3. Proposed revision to North American Industry Classification System for 2007.
4. Discussion of topics for the next meeting.

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Room 10

1. 2003 Survey of Occupational Injuries and Illnesses results: December summary release; March case and demographics release.
2. Update on special survey on Workplace Violence Prevention Practices.
3. Special Training Survey.
4. Study of multiple fatality incidents conducted by BLS.
5. Occupational Safety and Health Statistics Strategic Planning.
6. Budget update.
7. Other business.
8. Discussion of topics for the next meeting.

Wednesday, June 8, 2005

9:30 a.m.—Committee on Prices and Living Conditions—Room 10

1. Expanded Import Price Indexes by locality of origin.
2. Discussion of topics for the next meeting.

1:30 p.m.—Committee on Compensation and Working Conditions—Room 10

1. Upcoming changes in the Employment Cost Index.
 - a. North American Industry Classification System and the Standard Occupational Classification System.
 - b. Reweighting and rebasing, and methodological changes.
 - c. Publication plans and continuity concerns.
2. A new measure for the Employment Cost Index: Estimates excluding incentive paid workers.
3. Research plans for the Employment Cost Index Possible additional Employment Cost Index series.
4. Summary of recently issued data on Work Stoppages in 2004.
5. Update on National Compensation Survey data on employee benefit plans. Publication plans for 2005.
6. Discussion of topics for the next meeting.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202-691-5970.

Signed at Washington, DC this 4th day of May 2005.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 05-9385 Filed 5-10-05; 8:45 am]

BILLING CODE 4510-24-P

NATIONAL COUNCIL ON DISABILITY**Sunshine Act Meetings**

TYPE: Quarterly meeting.

DATE AND TIMES: July 25, 2005, 9 a.m.—5 p.m.

July 27, 2005, 9 a.m.—12 p.m.

LOCATION: The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA.

STATUS: This meeting will be open to the public.

AGENDA: Reports from the Chairperson and the Executive Director, Team Reports, Americans with Disabilities Act (ADA) Impact Forums Update, Unfinished Business, New Business, Announcements, Adjournment.

TYPE: ADA 15th Anniversary Federal Partners Seminar.

DATE AND TIME: July 26, 2005, 9 a.m.—1 p.m.

LOCATION: Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

AGENDA: Opening Plenary Session, ADA-related panel discussions, Closing Plenary Session.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; (202) 272-2004 (voice), (202) 272-2074 (TTY), (202) 272-2022 (fax), mquigley@ncd.gov (e-mail).

AGENCY MISSION: NCD is an independent Federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD at least two weeks before these meetings.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD at least two weeks before these meetings.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend these meetings. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at these meetings. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: May 6, 2005.

Ethel D. Briggs,

Executive Director.

[FR Doc. 05-9473 Filed 5-9-05; 12:06 pm]

BILLING CODE 6820-MA-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51651; File No. SR-BSE-2005-01]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Price Improvement Period Under the Rules of the Boston Options Exchange Facility

May 3, 2005.

On January 4, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the rules of the Boston Options Exchange Facility ("BOX") relating to the BOX's Price Improvement Period (the "PIP"). On March 22, 2005, the BSE filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 29, 2005.⁴ The Commission received no comments on the proposal. This Order approves the proposed rule change, as amended.

The BSE proposes to amend the BOX Rules to eliminate certain restrictions on the ability of Order Flow Providers, Market Makers, and Public Customers to participate in the PIP. The proposal would allow Order Flow Providers to submit "Improvement Orders"⁵ to the PIP on behalf of Public Customers through any type of instruction they wish to accept, so long as the Improvement Order is identified as a Public Customer Order when it is submitted.⁶ The BSE also proposes to

eliminate the current requirement that an Options Participant⁷ that is not assigned as a Market Maker in the relevant class that wishes to participate in a PIP must have an order on the BOX Book for its proprietary account equal to the best BOX price before the PIP commences (unless the participant submitted the Primary Improvement Order⁸ or holds a Customer PIP Order). In addition, the BSE proposes to eliminate all references to "PIP Proprietary Orders" because, under the proposal, all Options Participants (except for the Order Flow Provider or Market Maker that submits the relevant Primary Improvement Order to the PIP) would now be able to submit Improvement Orders for their proprietary accounts without the above restrictions, and as such, this separate order type would no longer be necessary.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, the requirements of Section 6(b) of the Act¹⁰ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

rounded five cent or ten cent increments, as appropriate, at which the order is to be placed in the BOX Book (the "BOX Book Reference Price"); and a specific price stated in one cent increments at which the Public Customer wishes to participate in any PIP that may occur while his order is on the BOX Book. A Customer PIP Order can participate in a PIP only if the BOX Book Reference Price is equal to the best BOX price at the time a PIP commences. See further at Section 18(g) of Chapter I of the BOX Rules.

⁷ An "Options Participant" is a firm or organization that is registered with the Exchange for purposes of participating in options trading on the BOX as an Order Flow Provider or Market Maker. See Section 1(40) of Chapter I of the BOX Rules.

⁸ When an Options Participant submits a Customer Order to the PIP, the Options Participant also submits a matching contra order, the "Primary Improvement Order," on the opposite side of the market than that of the Customer Order, and at a higher bid (lower offer) than that of the national best bid or offer (NBBO) at the time of the commencement of the PIP.

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will increase opportunities for Public Customers and BOX Options Participants to participate in the PIP, and should thereby enhance competition and the possibility of price improvement for Customer Orders submitted to the PIP.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BSE-2005-01), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-2298 Filed 5-10-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-51658; File No. SR-NASD-2005-033]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Taping Rule "Opt Out" and Exemption Provisions

May 5, 2005.

On March 22, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend paragraph (L) of NASD Rule 3010(b)(2) ("Taping Rule"). The proposed rule change would (1) require member firms that are seeking an exemption from the Taping Rule to submit their exemption requests to NASD within 30 days of receiving notice from NASD or obtaining actual knowledge that they are subject to the provisions of the Taping Rule and (2) clarify that firms that trigger application of the Taping Rule for the first time can elect to either themselves of the one-time "opt out provision" or seek an exemption from the Taping Rule, but they may not seek both options.³ The proposal also

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ According to the NASD, it will announce the effective date of the proposed rule change in a Notice to Members ("NtM") to be published no later

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded and replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 51418 (March 23, 2005), 70 FR 15955.

⁵ Generally, an "Improvement Order" is an order submitted to the PIP to compete on the contra side for a Customer Order entered into the PIP under the procedures detailed in Section 18 of Chapter I of the BOX Rules. Improvement Orders are submitted in increments of one cent, as set forth with additional clarity in the proposed rule change.

⁶ Currently, a public customer may participate in a PIP only if it has provided an Order Flow Provider with a "Customer PIP Order," an order that includes a specific order size; a price stated in

replaced, as a technical change, several references to "Association" and "NASD Regulation" in NASD Rule 3010(b)(2) with "NASD."

The proposed rule change was published for comment in the **Federal Register** on April 4, 2005.⁴ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,⁵ and, in particular, the requirements of Section 15A of the Act⁶ and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should ensure that members use the opt and exemption provisions of the Taping Rule consistent with the investor protection concerns that the Taping Rule is intended to address.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2005-033) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 05-9388 Filed 5-10-05; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51661; File No. SR-NYSE-2005-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Elimination of Exchange Rules 499 and 501A

May 5, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 9, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.³ On March 16, 2005, NYSE filed Amendment No. 1 to the proposed rule change.⁴ On April 22, 2005, NYSE filed Amendment No. 2 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate NYSE Rules 499 and 501A. NYSE Rule 499 relates to the same requirements set out in Sections 801.00 to 804.00 of the Exchange's Listed Company Manual (the "LCM") and NYSE Rule 501A restates Section 12(d) of the Act.⁶ The Exchange also proposes to eliminate references to NYSE Rule 499 in Section 801.00 of the NYSE LCM. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ In Amendment No. 1, NYSE clarified that NYSE Rule 499 has not been updated to reflect all of the current requirements of Sections 801.00 through 804.00 of the NYSE Listed Company Manual.

⁵ Amendment No. 2 superseded the originally-filed proposed rule change and Amendment No. 1 in their entirety.

⁶ 15 U.S.C. 78l(d).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate NYSE Rules 499 and 501A. NYSE Rule 499 (Suspension from Dealings or Removal from List by Action of the Exchange) sets forth the requirements for the continued listing of securities on the NYSE, as well as the procedures for delisting securities that do not meet the continued listing criteria. These requirements and procedures are also set forth as NYSE Listed Company Manual Sections 801.00 through 804.00, although NYSE Rule 499 has not been updated to reflect all of the current requirements of Sections 801.00 through 804.00. For example, NYSE Rule 499 Supplementary Material .20, Numerical and Other Criteria, Item 8—REITS sets forth a quantitative continued listing standard for REITs of \$30,000,000 in both total market capitalization and stockholders' equity. For purposes of the equivalent Listed Company Manual Section 802.01 requirement, this standard was amended in July 1999⁷ and June 2001⁸ so that the current continued financial listing standard for REITs is average market capitalization over 30 consecutive trading days of at least \$15,000,000. Another example of the outdated nature of NYSE Rule 499 is Supplementary Material .20, Numerical and Other Criteria, Item 17—"A Class of Non-Voting Common Stock is Created." This item was actually eliminated from Section 802.01D of the Listed Company Manual in 1996.⁹

⁷ See Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999) (File No. SR-NYSE-99-29).

⁸ See Securities Exchange Act Release No. 44481 (June 27, 2001), 66 FR 35303 (July 3, 2001) (File No. SR-NYSE-2001-02).

⁹ See Securities Exchange Act Release No. 37238 (May 22, 1996), 61 FR 27123 (May 30, 1996) (File No. SR-NYSE-96-06).

than 60 days following Commission approval. The effective date would be 30 days following publication of the *NtM* announcing Commission approval.

⁴ See Securities Exchange Act Release No. 51434 (March 24, 2005), 70 FR 17134.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

The Exchange believes it is appropriate that the requirements relating to the continued trading and delisting of listed companies' securities be set forth solely in the Listed Company Manual. The inclusion of NYSE Rule 499 in the Exchange Rules preceded the creation of the Listed Company Manual and is an historical anomaly, as the Exchange Rules are generally applicable only to members rather than listed companies. Accordingly, the Exchange believes that the continued listing and delisting requirements are more properly solely contained in the Listed Company Manual.

The Exchange also proposes to eliminate NYSE Rule 501A (Withdrawal from Listing and Registration Under Securities Exchange Act of 1934), which simply refers to and restates the Section 12(d) of the Exchange Act relating to the withdrawal or delisting of a security.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁰ because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(F)(6) thereunder.¹² At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

Although Rule 19b-4(F)(6) under the Act¹⁴ requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change seeks to eliminate Exchange Rules that are already contained in the NOSE Listed Company Manual. The NOSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative date will allow the immediate removal of NOSE Rules 499 and 501A and eliminate any confusion that has arisen from the inconsistent updating of NOSE Rule 499 over the years. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Interned comment form (<http://www.Sec.gov/rules/fro.shtml>); or

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(F)(6).

¹³ For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 22, 2005, the date NOSE filed Amendment No. 2.

¹⁴ *Id.*

¹⁵ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(F).

- Send an E-mail to rule-comments@Sec.gov. Please include File Number JR-NOSE-2005-15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, PC 20549-0609.

All submissions should refer to File Number JR-NOSE-2005-15. This file number should be included on the subject line if E-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Interned Web site (<http://www.Sec.gov/rules/fro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, PC 20549. Copies of such filing also will be available on NOSE's Web site (<http://www.NOSE.mom/regulation/construes/1098741855384.html>) and for inspection and copying at the principal office of NOSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number JR-NOSE-2005-15 and should be submitted on or before June 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-2307 Filed 5-10-05; 8:45 am]

BILLING CODE 8010-01-P

¹⁰ 15 U.S.C. 78f(b)(5).

¹⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51657; File No. SR-Phlx-2005-22]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and No. 2 Relating to a Dividend Spread Transaction Fee Cap

May 5, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 31, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Phlx submitted Amendments No. 1 and No. 2 to the proposal on April 27, 2005,³ and May 4, 2005, respectively.⁴ The proposed rule change has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of fees to amend its fee cap on equity option transaction and comparison charges on dividend spread transactions⁷ for a security with a declared dividend or distribution of less than \$0.25. For these transactions, the Registered Options Trader ("ROT") and specialist equity option transaction and comparison fees will be capped at \$1,000 per dividend spread transaction

effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee cap will be implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.⁸ The proposed fee cap would be effective for trades settling on or after April 1, 2005. The proposed fee cap will be in effect as a pilot program that will expire on September 1, 2005.

The text of the proposed rule change is available on the Phlx's Web site (<http://www.phlx.com>), at the Phlx's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange imposes a fee cap of \$1,750 on ROT and specialist equity option transaction and comparison charges on dividend spread transactions and merger spread transactions.⁹ The purpose of capping at \$1,000 the ROT and specialist transaction and

comparison charges for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25 is to attract additional liquidity to the Exchange.¹⁰ In addition, the fee cap should provide an opportunity for specialists and ROTs to engage in additional dividend opportunities in lower dividend distributions at a reduced rate, whereas the \$1,750 current fee cap may not be economically beneficial because as the dividend distribution amount declines, the opportunity for a profitable strategy also declines. Thus, a lower cap should provide additional dividend strategy opportunities and additional business to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder, because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

¹⁰ Similar to the Exchange's current rebate process, members who wish to benefit from the proposed fee cap will be required to submit to the Exchange a written rebate request with supporting documentation.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made clarifying and minor technical changes to the text of the proposal.

⁴ Amendment No. 2 included the expiration date of the pilot program regarding the Exchange's fee caps for dividend and merger spread transactions as part of the text of its fee schedule. See also Securities Exchange Act Release No. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ For purposes of this proposal, a "dividend spread" transaction is any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

⁸ The Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread strategy, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per side for specialist executions on the business day before the underlying stock's ex-date. The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date, a stock is said to trade ex-dividend. See Securities Exchange Act Release No. 48983 (December 23, 2003), 68 FR 75703 (December 31, 2003) (SR-Phlx-2003-80).

⁹ For purposes of this proposal, the Exchange defines a "merger spread" transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Securities Exchange Act Release No. 51596 (April 21, 2005) (SR-Phlx-2005-19).

or otherwise in furtherance of the purposes of the Act.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2005-22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2005-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2005-22 and should be submitted on or before June 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-2306 Filed 5-10-05; 8:45 am]

BILLING CODE 8010-01-P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2005.

SUMMARY: Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of November 1, 2005, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202-502-4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at <http://www.ussc.gov>.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on February 23, 2005 (*see* 70 FR 8868). The Commission held a public hearing on

the proposed amendments in Washington, DC, on April 12, 2005. On April 29, 2005, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2005.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Ricardo H. Hinojosa,

Chair.

1. Amendment: Chapter Two, Part B, Subpart 1 is amended by adding at the end the following new guideline and accompanying commentary:

“§ 2B1.6. Aggravated Identity Theft

(a) If the defendant was convicted of violating 18 U.S.C. 1028A, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

Commentary

Statutory Provision: 18 U.S.C. 1028A. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Imposition of Sentence.—

(A) In General.—Section 1028A of title 18, United States Code, provides a mandatory term of imprisonment. Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. 1028A is the term required by that statute. Except as provided in subdivision (B), 18 U.S.C. 1028A also requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

(B) Multiple Convictions Under Section 1028A.—Section 1028A(b)(4) of title 18, United States Code, provides that in the case of multiple convictions under 18 U.S.C. 1028A, the terms of imprisonment imposed on such counts may, in the discretion of the court, run concurrently, in whole or in part, with each other. *See* the Commentary to § 5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance regarding imposition of sentence on multiple counts of 18 U.S.C. 1028A.

2. Inapplicability of Chapter Two Enhancement.—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense. A sentence under this guideline accounts for this factor for the underlying offense of conviction, including any such

¹⁵ See 15 U.S.C. 78s(b)(3)(C). For purposes of calculation the 60-day abrogation period, the Commission considers the period to commence on May 4, 2005, the date the Phlx filed Amendment No. 2.

¹⁶ 17 CFR 200.30-3(a)(12).

enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). ‘Means of identification’ has the meaning given that term in 18 U.S.C. 1028(d)(7).

3. Inapplicability of Chapters Three and Four.—Do not apply Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. See §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2.”.

The Commentary to § 3B1.3 captioned “Application Notes” is amended in Note 1 by inserting “Definition of ‘Public or Private Trust’.—” before “‘Public or private trust’ refers to”, and by striking the second paragraph; by redesignating Notes 2 through 4 as Notes 3 through 5, respectively; and by inserting after Note 1 the following:

“2. Application of Adjustment in Certain Circumstances.—Notwithstanding Application Note 1, or any other provision of this guideline, an adjustment under this guideline shall apply to the following:

(A) An employee of the United States Postal Service who engages in the theft or destruction of undelivered United States mail.

(B) A defendant who exceeds or abuses the authority of his or her position in order to obtain unlawfully, or use without authority, any means of identification. ‘Means of identification’ has the meaning given that term in 18 U.S.C. 1028(d)(7). The following are examples to which this subdivision would apply: (i) An employee of a state motor vehicle department who exceeds or abuses the authority of his or her position by knowingly issuing a driver’s license based on false, incomplete, or misleading information; (ii) a hospital orderly who exceeds or abuses the authority of his or her position by obtaining or misusing patient identification information from a patient chart; and (iii) a volunteer at a charitable organization who exceeds or abuses the authority of his or her position by obtaining or misusing identification information from a donor’s file.”.

Section 3D1.1 is amended by striking subsection (b) and inserting the following:

“(b) Exclude from the application of §§ 3D1.2–3D1.5 the following:

(1) Any count for which the statute (A) specifies a term of imprisonment to be imposed; and (B) requires that such

term of imprisonment be imposed to run consecutively to any other term of imprisonment. Sentences for such counts are governed by the provisions of § 5G1.2(a).

(2) Any count of conviction under 18 U.S.C. 1028A. See Application Note 2(B) of the Commentary to § 5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance on how sentences for multiple counts of conviction under 18 U.S.C. 1028A should be imposed.”.

The Commentary to § 5G1.2 captioned “Application Notes” is amended in Note 2 by inserting “(A) In General.”—before “Subsection (a) applies”; by inserting “and 18 U.S.C. 1028A (requiring a mandatory term of imprisonment of either two or five years, based on the conduct involved, and also requiring, except in the circumstances described in subdivision (B), the sentence imposed to run consecutively to any other term of imprisonment)” after “imprisonment”); by striking “Note, however,” and all that follows through “§ 3624(e).”; and by adding at the end the following:

“(B) Multiple Convictions Under 18 U.S.C. 1028A.—Section 1028A of title 18, United States Code, generally requires that the mandatory term of imprisonment for a violation of such section be imposed consecutively to any other term of imprisonment. However, 18 U.S.C. 1028A(b)(4) permits the court, in its discretion, to impose the mandatory term of imprisonment on a defendant for a violation of such section “concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission * * *”.

In determining whether multiple counts of 18 U.S.C. 1028A should run concurrently with, or consecutively to, each other, the court should consider the following non-exhaustive list of factors:

(i) The nature and seriousness of the underlying offenses. For example, the court should consider the appropriateness of imposing consecutive, or partially consecutive, terms of imprisonment for multiple counts of 18 U.S.C. 1028A in a case in which an underlying offense for one of the 18 U.S.C. 1028A offenses is a crime of violence or an offense enumerated in 18 U.S.C. 2332b(g)(5)(B).

(ii) Whether the underlying offenses are groupable under § 3D1.2 (Multiple Counts). Generally, multiple counts of

18 U.S.C. 1028A should run concurrently with one another in cases in which the underlying offenses are groupable under § 3D1.2.

(iii) Whether the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2) are better achieved by imposing a concurrent or a consecutive sentence for multiple counts of 18 U.S.C. 1028A.

(C) Imposition of Supervised Release.—In the case of a consecutive term of imprisonment imposed under subsection (a), any term of supervised release imposed is to run concurrently with any other term of supervised release imposed.

See 18 U.S.C. 3624(e).”.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1028 the following:

“18 U.S.C. 1028A 2B1.6”.

Reason for Amendment: This amendment implements sections 2 and 5 of the Identity Theft Penalty Enhancement Act, Public Law 108–275, 118 Stat. 831 (“the Act”), which create two new criminal offenses at 18 U.S.C. 1028A and direct the Sentencing Commission to expand the upward adjustment at § 3B1.3 (Abuse of Position of Trust/Special Skill). This amendment also provides guidance to the courts on imposing sentences for multiple violations of section 1028A.

The Act creates a new offense at 18 U.S.C. 1028A(a)(1) that prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific enumerated felonies. These felonies consist of various types of fraud, including mail and wire fraud in connection with passports, visas and other immigration, nationality, and citizenship laws, programs under the Social Security Act, and the acquisition of firearms. A conviction under section 1028A(a)(1) carries a two-year mandatory term of imprisonment that must run consecutively to any other term of imprisonment, including the sentence for the underlying felony conviction. The Act also creates a new offense at 18 U.S.C. 1028A(b)(1) that prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific felonies enumerated in 18 U.S.C. 2332b(g)(5)(B) (“federal crimes of terrorism”). Section 1028A(b)(1) provides a five-year mandatory term of imprisonment that must run consecutively to any other term of imprisonment, including the sentence for the underlying felony conviction. As described below, section

1028A(b)(4) creates an exception to the requirement for consecutive terms of imprisonment in cases involving multiple violations of the statute sentenced at the same time.

First, in response to the creation of these new criminal offenses, the amendment creates a new guideline at § 2B1.6 (Aggravated Identity Theft). This guideline is patterned after § 2K2.4 (Use of a Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to a Certain Crimes). Because the new offenses carry a fixed, mandatory consecutive term of imprisonment, the new guideline, as does § 2K2.4, provides that the guideline sentence is the term of imprisonment required by statute. To avoid unwarranted double-counting, the amendment contains an application note that prohibits the application of any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense in cases in which a sentence under § 2B1.6 is imposed in conjunction with a sentence for an underlying offense. Also, consistent with § 2K2.4, the new guideline at § 2B1.6 contains an application note that provides that adjustments under Chapters Three and Four are inapplicable to sentences under this guideline.

Second, in response to the directive in section 5 to amend § 3B1.3 (Abuse of Trust or Use of Special Skill) to include a "defendant [who] exceeds or abuses the authority of his or her position in order to obtain unlawfully or use without authority any means of identification," the Commission created Application Note 2 to § 3B1.3 to include such defendants within the scope of the guideline. The application note contains several examples to illustrate the types of conduct intended to be within the scope of the new provision.

Third, the amendment adds a number of provisions at appropriate guidelines in order to provide guidance to courts in accordance with section 2 of the Act (18 U.S.C. 1028A(b)(4)). That section states that "a term of imprisonment imposed on a person for violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission * * *." The amendment states a general rule, at § 5G1.2

(Sentencing on Multiple Counts of Conviction), Application Note 2(B), providing that the court has discretion to impose concurrent or consecutive, or partially concurrent and partially consecutive, terms of imprisonment for multiple violations of 18 U.S.C. 1028A. A non-exhaustive list of factors for courts to consider in making this determination is provided, including the nature and seriousness of the underlying offenses and whether the offenses would be groupable under § 3D1.2 (Multiple Counts).

Finally, the amendment modifies § 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to make clear that section 1028A offenses are excluded from the general grouping rules in §§ 3D1.2–3D1.5 and makes conforming additions and changes to the new guideline at § 2B1.6 (Aggravated Identity Theft) in Application Note 1 and § 3D1.1(b)(1) and (2).

2. Amendment: Section 2R1.1(a) is amended by striking "10" and inserting "12".

Section 2R1.1(b) is amended by striking subdivision (2) and inserting the following:

"(2) If the volume of commerce attributable to the defendant was more than \$1,000,000, adjust the offense level as follows:

Volume of commerce (apply the greatest)	Adjustment to offense level
(A) More than \$1,000,000	add 2.
(B) More than \$10,000,000 ...	add 4.
(C) More than \$40,000,000 ..	add 6.
(D) More than \$100,000,000	add 8.
(E) More than \$250,000,000	add 10.
(F) More than \$500,000,000	add 12.
(G) More than \$1,000,000,000.	add 14.
(H) More than \$1,500,000,000.	add 16.

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level."

The Commentary to § 2R1.1 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. Application of Chapter Three (Adjustments).—Sections 3B1.1 (Aggravating Role), 3B1.2 (Mitigating Role), 3B1.3 (Abuse of Position of Trust or Use of Special Skill), and 3C1.1

(Obstructing or Impeding the Administration of Justice) may be relevant in determining the seriousness of the defendant's offense. For example, if a sales manager organizes or leads the price-fixing activity of five or more participants, the 4-level increase at § 3B1.1(a) should be applied to reflect the defendant's aggravated role in the offense. For purposes of applying § 3B1.2, an individual defendant should be considered for a mitigating role adjustment only if he were responsible in some minor way for his firm's participation in the conspiracy."

The Commentary to § 2R1.1 captioned "Application Notes" is amended in Note 2 by striking the first sentence and inserting the following:

"Considerations in Setting Fine for Individuals.—In setting the fine for individuals, the court should consider the extent of the defendant's participation in the offense, the defendant's role, and the degree to which the defendant personally profited from the offense (including salary, bonuses, and career enhancement)."

The Commentary to § 2R1.1 captioned "Background" is amended in the second paragraph by striking the "The Commission" and all that follows through "general deterrence."; in the third paragraph by striking "confinement of six months or longer" and inserting "some period of confinement"; and in the last paragraph by striking the last sentence.

Reason for Amendment: This amendment responds to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. 108–237 (the "Act"). The Act increased the statutory maximum term of imprisonment for antitrust offenses under 15 U.S.C. 1 and 3(b) from three to ten years. The amendment responds to congressional concern about the seriousness of antitrust offenses and provides for antitrust penalties that are more proportionate to those for sophisticated frauds sentenced under § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). The Commission has long recognized the similarity of antitrust offenses to sophisticated frauds.

The amendment increases the base offense level for antitrust offenses in § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors) to level 12. The higher base offense level ensures that penalties

for antitrust offenses will be coextensive with those for sophisticated frauds sentenced under § 2B1.1 and recognizes congressional concern about the inherent seriousness of antitrust offenses. The penalties for sophisticated fraud have been increased incrementally due to a series of amendments to § 2B1.1, while no commensurate increases for antitrust offenses had occurred. Raising the base offense level of § 2R1.1 helps restore the historic proportionality in the treatment of antitrust offenses and sophisticated frauds.

The “volume of commerce” table at § 2R1.1(b)(2) is amended to provide up to 16 additional offense levels for the defendant whose offense involves more than \$1,500,000,000, while the new table’s first threshold is raised from \$400,000 to \$1,000,000. The new volume of commerce table: (1) Recognizes the depreciation in the value of the dollar since the table was last revised in 1991; (2) responds to data indicating that the financial magnitude of antitrust offenses has increased significantly; and (3) provides greater deterrence of large scale price-fixing crimes.

Application Note 1 to § 2R1.1 is amended to emphasize the potential relevance of such Chapter Three enhancements as § 3B1.1 (Aggravating Role), § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), and § 3C1.1 (Obstructing or Impeding the Administration of Justice) in determining the appropriate sentence for an antitrust offender. Application Note 2 also is amended to highlight the potential relevance of the defendant’s role in the offense in determining the amount of fine to be imposed. Finally, the amendment strikes outdated background commentary.

3. Amendment: Section 2A2.4 is amended by striking the Commentary captioned “Background”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 15 in the first sentence by inserting “involving fraudulent conduct that is” after “establishes an offense”; and in the second sentence by inserting “involves fraudulent conduct that” after “the offense”.

Section 2B3.3(c)(1) is amended by inserting “; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions” after “Official Right”.

Section 2C1.3(c)(1) is amended by inserting “; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials;

Conspiracy to Defraud by Interference with Governmental Functions” after “Official Right”.

Section 2C1.8(c)(1) is amended by inserting “; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions” after “Official Right”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 5 in the first paragraph by striking “whether a greater quantity of the analogue is needed to produce a substantially similar effect on the central nervous system as” and inserting “whether the same quantity of analogue produces a greater effect on the central nervous system than”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 19 by striking “(b)(5)(A)” each place it appears and inserting “(b)(6)(A)”; in Note 20 by striking “(b)(5)(B) or (C)” and inserting “(b)(6)(B) or (C)”; and by striking “(b)(5)(C)” and inserting “(b)(6)(C)”; and in Note 21 by striking “(b)(6)” each place it appears and inserting “(b)(7)”.

The Commentary to § 2D1.1 captioned “Background” is amended in the ninth paragraph by striking “(b)(5)(A)” and inserting “(b)(6)(A)”; in the last paragraph and by striking “(b)(5)(B) and (C)” and inserting “(b)(6)(B) and (C)”.

Section 2D1.11(e) is amended in subdivision (1) by striking “2271 L or more of Gamma-butyrolactone;” and inserting “1135.5 L or more of Gamma-butyrolactone;”;

in subdivision (2) by striking “At least 681.3 L but less than 2271 L of Gamma-butyrolactone;” and inserting “At least 340.7 L but less than 1135.5 L of Gamma-butyrolactone;”;

in subdivision (3) by striking “At least 227.1 L but less than 681.3 L of Gamma-butyrolactone;” and inserting “At least 113.6 L but less than 340.7 L of Gamma-butyrolactone;”;

in subdivision (4) by striking “At least 159 L but less than 227.1 L of Gamma-butyrolactone;” and inserting “At least 79.5 L but less than 113.6 L of Gamma-butyrolactone;”;

in subdivision (5) by striking “At least 90.8 L but less than 159 L of Gamma-butyrolactone;” and inserting “At least 45.4 L but less than 79.5 L of Gamma-butyrolactone;”;

in subdivision (6) by striking “At least 22.7 L but less than 90.8 L of Gamma-butyrolactone;” and inserting “At least 11.4 L but less than 45.4 L of Gamma-butyrolactone;”;

in subdivision (7) by striking “At least 18.2 L but less than 22.7 L of Gamma-butyrolactone;” and inserting “At least

9.1 L but less than 11.4 L of Gamma-butyrolactone;”;

in subdivision (8) by striking “At least 13.6 L but less than 18.2 L of Gamma-butyrolactone;” and inserting “At least 6.8 L but less than 9.1 L of Gamma-butyrolactone;”;

in subdivision (9) by striking “At least 9.1 L but less than 13.6 L of Gamma-butyrolactone;” and inserting “At least 4.5 L but less than 6.8 L of Gamma-butyrolactone;”;

and in subdivision (10) by striking “Less than 9.1 L of Gamma-butyrolactone;” and inserting “Less than 4.5 L of Gamma-butyrolactone;”.

The Commentary to § 2K2.1 captioned “Statutory Provisions” is amended by striking “(e)–(i), (k)–(o)” and inserting “(e)–(h), (j)–(n)”.

Section 2M6.1 is amended by striking “(a)(4)*” in subsection (b)(1)(A) and inserting “(a)(4)(A)”; and by striking “*Note: The reference to “(a)(4)” should be to “(a)(4)(A).”.

Section 3D1.2(d) is amended by striking “2C1.7;”.

The Commentary to § 5D1.2 captioned “Application Notes” is amended in Note 2 by inserting “Limitation on” before “Applicability of Statutory”.

Section 8C2.1(a) is amended by striking “, 2C1.7”.

Appendix A (Statutory Index) is amended by striking the following:

“18 U.S.C. 924(i) 2K2.1
18 U.S.C. 924(j)(1) 2A1.1, 2A1.2
18 U.S.C. 924(j)(2) 2A1.3, 2A1.4
18 U.S.C. 924(k)–(o) 2K2.1”;

and inserting the following:

“18 U.S.C. 924(i)(1) 2A1.1, 2A1.2
18 U.S.C. 924(i)(2) 2A1.3, 2A1.4
18 U.S.C. 924(j)–(n) 2K2.1”.

Reason for Amendment: This ten-part amendment consists of technical and conforming amendments to various guidelines.

First, this amendment deletes unnecessary background commentary in § 2A2.4 (Obstructing or Impeding Officers).

Second, this amendment makes minor clarifying amendments to Application Note 15 in the fraud guideline, § 2B1.1, to make clear that, in order for the cross reference at § 2B1.1(c)(3) to apply, the conduct set forth in the count of conviction must establish a fraud or false statement-type offense.

Third, this amendment makes technical amendments to several guidelines to conform to changes made in the public corruption guidelines in the 2004 amendment cycle (see Appendix C to the Guidelines Manual, Amendment 666). Specifically, the proposed amendment corrects title references to § 2C1.1 in §§ 2B3.3(c)(1),

2C1.3(c)(1), and 2C1.8(c)(1) and strikes references to § 2C1.7 in §§ 3D1.2(d) and 8C2.1.

Fourth, this amendment clarifies Application Note 5 in the drug guideline, § 2D1.1, regarding drug analogues. The current note suggests that drug analogues are less potent than the drug for which it is an analogue. However, by statute, analogues can only be the same or more potent.

Fifth, this amendment redesignates incorrect references in a number of Application Notes in the drug guideline, § 2D1.1.

Sixth, this amendment conforms § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) to changes made in the drug guideline, § 2D1.1, in the 2004 amendment cycle (see Appendix C to the Guidelines Manual, Amendment 667). Specifically, the proposed amendment amends the Chemical Quantity Table in § 2D1.11(e) so that the amount of gamma-butyrolactone (GBL), at any particular offense level, is the amount that provides a 100 percent yield of gamma-hydroxybutyric acid (GHB).

Seventh, this amendment updates the statutory provisions in § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to account for redesignations of 18 U.S.C. 924 offenses.

Eighth, this amendment corrects a typographical error in § 2M6.1 (Weapons of Mass Destruction).

Ninth, this amendment corrects the title to § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentence in Certain Cases) in Application Note 2 of § 5D1.2 (Terms of Supervised Release.).

Tenth, this amendment corrects Appendix A (Statutory Index) to account for redesignations of 18 U.S.C. 924 offenses.

[FR Doc. 05-9378 Filed 5-10-05; 8:45 am]

BILLING CODE 2211-01-P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #10111 and #10112

[Pennsylvania Disaster Number PA-00001]

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the State of Pennsylvania (FEMA-1587-DR), dated 4/14/2005.

Incident: Flooding.

Incident Period: 4/2/2005 through 4/23/2005.

EFFECTIVE DATE: 4/23/2005.

Physical Loan Application Deadline Date: 6/14/2005.

EIDL Loan Application Deadline Date: 1/9/2006.

ADDRESSES: Submit completed loan applications to U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Pennsylvania, dated 4/14/2005, is hereby amended to establish the incident period for this disaster as beginning 4/02/2005 and continuing through 4/23/2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05-9377 Filed 5-10-05; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on Transit Improvements in the Northwest Corridor to Irving/DFW in Dallas, TX

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and Dallas Area Rapid Transit (DART) issue this notice to advise interested agencies and the public of their intent to prepare an Environmental Impact Statement (EIS) on the proposed Northwest Corridor-Irving/DFW Line Light Rail Transit (LRT) Project in Dallas and Irving, Texas. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), as amended.

The Northwest Corridor-Irving/DFW Line LRT project is the product of the Northwest Corridor Major Investment Study (MIS) completed by DART in

early 2000. The MIS identified a Locally Preferred Investment Strategy (LPIS), which included a light rail element with two service lines, the Carrollton Line and the Irving/DFW Line. An EIS evaluating alternatives for the Carrollton Line has been completed, and FTA issued a Record of Decision on this portion of the LPIS on February 5, 2004.

The identified primary travel need for the Northwest Corridor-Irving/DFW Line LRT is to serve the general northwest-southeast travel pattern along the Interstate Highway (IH) 35E/State Highway (SH) 114 corridor from downtown Dallas into North Irving. The LPIS alignment addressed this need with an alignment that generally parallels SH 114 through north Irving before terminating on the north side of SH 114, west of Beltline Road.

After adoption of the LPIS, significant changes in land use and transportation patterns have occurred in the Irving/DFW Corridor. Subsequent analyses by DART for the Irving/DFW Corridor have resulted in a refinement to the LPIS alignment. The refined alignment also addresses the primary travel need with an alignment that runs parallel but south of SH 114 through north Irving. Both of these "Build" alternatives will be fully evaluated in the EIS.

DATES: *Comment due date:* Written comments on the scope of the EIS, including the alternatives and impacts to be considered, should be sent to John Hoppie, Project Manager by July 1, 2005. See **ADDRESSES** below.

Scoping Meeting: A Public Scoping Meeting will be held June 29, 2005, at 6:30 p.m. at the University of Dallas—Haggard University Center, 1845 E. Northgate Drive, Irving, Texas. The meeting will be accessible to persons with disabilities. Individuals requiring special assistance to participate fully, such as a translator or sign-language interpreter, should notify DART in advance as indicated under **ADDRESSES** below.

Interagency Coordination Meeting: DART will invite all federal, state and local agencies with a possible interest in any aspect of the proposed project or its impacts to an interagency coordination meeting and will provide scoping materials to these agencies prior to that meeting. The likely cooperating agencies include the Federal Aviation Administration, the Transportation Security Administration, and North Central Texas Council of Governments (NCTCOG).

ADDRESSES: Written comments should be sent to John Hoppie, Project Manager, Dallas Area Rapid Transit, P.O. Box 660163, Dallas, Texas 75266-7213.

Telephone: 214-749-2525. Fax: 214-749-3670. E-mail: jhoppie@dart.org.

FOR FURTHER INFORMATION CONTACT: John Sweek, Community Planner, Federal Transit Administration, Region VI; phone: (817) 978-0550.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and DART invite interested individuals, organizations, businesses and federal, state and local agencies to participate in determining the scope of the EIS on the Irving/DFW Line, including alternative alignments and station locations. Comments should focus on suggesting alternatives that may be less costly or have fewer environmental impacts while achieving similar transportation objectives, or on identifying any significant social, economic, or environmental issues related to the alternatives under consideration. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcome and will be considered in the development in the final study scope. Scoping comments may be made orally or in writing not later than July 1, 2005. See **DATES** and **ADDRESSES** above. Additional information on the EIS process, the alternatives and anticipated impact issues is contained in a "Scoping Information Document". Copies of the scoping document are available from DART. See **DATES** and **ADDRESSES** above. In addition, a project website has been established to provide scoping and other information at <http://www.dart.org/nwdfwcorridor.asp>.

II. Description of the Study Area and Project Need

The Northwest Corridor Study Area covered in the MIS includes a large part of northwest Dallas County. It extends from downtown Dallas on the south, to SH 121 on the west and north, to east of Marsh Lane and IH-35E on the east. The LPIS adopted on the basis of the MIS includes two rail lines, the Carrollton Line and the Irving/DFW Line. Each of the two rail lines has independent utility in meeting the transportation needs of the study area. The Carrollton Line is advancing toward implementation. The Irving/DFW Line is the subject of this notice. The MIS that resulted in the proposed Irving/DFW Line is available online at <http://www.dart.org/nwdfwcorridor.asp>. The MIS is also available for inspection at DART offices by contacting John Hoppie as indicated in **ADDRESSES** above.

The Irving/DFW Line and its associated stations provide the opportunity to serve several important

regional activity centers. The proposed rail line will also provide numerous opportunities to interconnect the region's transit services, including DART's expanding LRT system, the Trinity Railway Express commuter rail operation, and DART's local and express bus service.

Regional growth has added significantly to the corridor's congestion, especially employment growth in Dallas County, and population growth in northern Dallas, Northeast Tarrant, and Denton Counties. According to findings of the MIS, in 2020 the northwest quadrant of Dallas County will account for 33.6 percent of employment in the entire Dallas-Fort Worth region. While only 6.4 percent of the region's land area, the study area is a large net importer of employees. In 1995, jobs outnumbered population by over 200,000. In 2020, the surplus of jobs over population is expected to grow to more than 336,000. Demographic information will be updated by the North Central Texas Council of Governments (NCTCOG) during the preparation of the EIS.

Land use in the corridor consists of a major concentration of employment near the Las Colinas Urban Center with residential uses occurring west and south of SH 114. Traffic volumes along SH 114 are expected to increase significantly in future years. The EPA designated the nine-county Dallas-Fort Worth region as a moderate non-attainment area for the pollutant ozone under the 8-hour standard in April 2004.

The proposed LRT project is part of multi-modal strategy that also incorporates bus service refinements, highway and HOV lane improvements, TSM and TDM strategies, and bicycle and pedestrian improvements. This strategy was developed during the preparation of the Northwest Corridor MIS completed by DART in early 2000.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include:

No-Build Alternative—The future No-Build Alternative is the transit system that will result in the design year (2030) if the project is not pursued. It consists of all transportation projects included in the adopted NCTCOG plan outside the study corridor, and normal growth in bus service inside the corridor, consistent with existing transit service policies.

MIS Build Alternative—The original MIS Build Alternative project consisted of an LRT Line of approximately 13.2 miles. The alignment began at the

junction with the Carrollton LRT Line north of the Bachman LRT Station and extended southwest on aerial structure over IH-35E and the Elm Fork of the Trinity River parallel to Spur 482. Near the Central Freight property and Texas Stadium parking lots, the alignment turned to the northwest, returned to grade and then elevated to aerial structure to cross over Loop 12, SH 114 and Tom Braniff Drive, landing on the south side of SH 114 and returning to grade. The alignment continued at-grade along the south side of SH 114, and then crossed over both the BNSF RR and SH 114 to enter the Las Colinas Urban Center area. The alignment continued at-grade through the Las Colinas Urban Center in the median of Lake Carolyn Parkway. The alignment then became aerial to cross over Northwest Highway. South of Colwell Boulevard the alignment became at-grade and paralleled Las Colinas Boulevard for a short distance until it turned northward. Adjacent to Royal Lane the alignment turned westerly and crossed over MacArthur Boulevard on aerial structure. Returning to grade, the route continued northwest to the north end of DFW airport with grade separations at SH 161, SH 114, Beltline Road and International Parkway. Seven stations were proposed within the MIS alignment: University of Dallas, South Las Colinas, North Urban Center, Royal Lane, SH 161, Belt Line Road, and DFW North. The University of Dallas station was located south of SH 114. The South Las Colinas Station was proposed in at the south end of the Las Colinas Urban Center, and another station was proposed in the North Urban Center near Northwest Highway. The Royal station was proposed south of Royal before the alignment turned to the west. Another Station was proposed near the junction SH 161 and SH 114. The sixth station was located near Beltline Road and the terminus station was located at the north end of DFW Airport.

Refined Build Alternative—The proposed project for environmental review consists of an LRT Line of approximately 9.5 miles. The LRT alignment begins at its junction with the Carrollton LRT Line north of the Bachman LRT Station and extends southwest on aerial structure over IH-35E and the Elm Fork of the Trinity River parallel to Spur 482. Near the Central Freight property and Texas Stadium parking lots, the alignment turns to the northwest, returns to grade and crosses under Loop 12 on the north side of SH 114. The alignment continues along the north side of SH 114 and crosses under the BNSF RR to enter the

Las Colinas Urban Center area. The alignment continues at-grade through the Las Colinas Urban Center in the median of Lake Carolyn Parkway. From the Urban Center, the proposed alignment crosses west over SH 114 and returns to grade north of Hidden Ridge Drive. The alignment turns south, then west with potential grade separations at Hidden Ridge Drive, MacArthur Boulevard and Walnut Hill Lane. Near Walnut Hill Lane the alignment enters into right-of-way that has been preserved for rail access into DFW International Airport. Entering onto airport property, the alignment crosses over SH 114 and Beltline Road before returning grade at the terminus station.

Station Locations: Six stations are proposed within the Irving/DFW corridor: University of Dallas, South Las Colinas, North Urban Center, Hidden Ridge, North Lake College, and Belt Line Road. The University of Dallas station is located between the main lanes and service road of westbound SH 114 south of Tom Braniff Drive. The at-grade South Las Colinas Station is proposed in at the south end of the Las Colinas Urban Center, and another at-grade station is proposed in the North Urban Center near Northwest Highway and SH 114. The Hidden Ridge Drive station is proposed to serve the large corporate complexes in the area west of SH 114. A station is located north of the campus to serve North Lake College and the surrounding area. The terminus station is proposed near Belt Line Road. Alignment and station options will be explored further during scoping.

Segmentation Analysis: Airport access options extending from Belt Line Road to the DFW Central Terminal Area will continue to be studied and evaluated separately by DART, DFW Airport, and others, but are not proposed to be part of this EIS. Airport access by rail was the subject of the *DFW International Airport Rail Planning and Implementation Study* (NCTCOG, 2002). This study identified several LRT options that could pivot of the proposed terminus of the Refined Build Alternative to serve the Central Terminal Area of DFW Airport.

As DART explored serving the core of DFW Airport as part of this project it became apparent that there were many unresolved issues regarding airport access. As a result there is a growing number of alignment alternatives to serve DFW. Each of these alternatives terminates at one of several proposed locations. Also DFW is planning terminal and taxiway expansions that could potentially impact the DART project.

As a result of a multi-agency coordination meeting that included the North Central Texas Council of Governments, FTA, FAA, DFW Airport, The-T, DCTA and DART it was decided that it would be prudent exclude airport access as part of this EIS. This would allow DART the opportunity to advance the Refined Build Alternative which vital component of DART's Transit System Plan while resolving the numerous complex issues associated with serving the Core area of DFW Airport.

FTA and DART have determined that terminating the project evaluated in this EIS at Belt Line Road is appropriate. As described below, the Refined Build Alternative and a future alignment that would serve the Central Terminus Area of DFW airport have independent utility.

- **Refined Build Alternative**—The Northwest Corridor to Irving is a 9.5-mile corridor serving the City of Irving. Major destinations along the corridor include: the University of Dallas, the Las Colinas Urban Center (one of the largest employment centers in the region), North Lake Community College and several planned developments. In addition the corridor will serve many residential communities in the City of Irving as well as other commuters who regularly use the State Highway 114 corridor.

- **Future Rail Service to the Central Terminus Area of DFW International Airport**—Depending on the selected alignment this will be a 3 to 6 mile independent project that would provide rail access to DFW airport from the entire DART LRT System. It will also provide an interface between DART and The-T and DCTA.

Additional Alternatives—Any additional alternatives that emerge during scoping, that reasonably address the project's purpose and need, and that have not been previously evaluated, will be considered.

IV. Probable Effects

The FTA and DART will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Impact areas to be addressed include: Land use, zoning, and economic development; secondary developments; land acquisition, displacements, and relocation of existing uses; cultural resource impacts including impacts on historical and archaeological resources and parklands/recreational areas; visual and aesthetic qualities; neighborhood compatibility; environmental justice; natural resource impacts including air quality, wetlands, water resources, and wildlife; noise and

vibration; hazardous materials; energy; safety and security; utilities; traffic and transportation impacts and airport operations. Potential impacts will be addressed for the long-term operation of each alternative and the short-term construction period. Measures to avoid, minimize, or mitigate all adverse impacts will be identified, evaluated, and adopted as appropriate.

V. FTA Procedures

In accordance with FHWA/FTA guidance on linking the planning and NEPA processes at http://www.environment.fta.dot.gov/streamlining/lpn_guidance.htm, the results of the *Northwest Corridor Major Investment Study* (DART, 2000), The *DFW International Airport Rail Planning and Implementation Study* (NCTCOG, 2002), and the *Northwest Corridor to Irving/DFW Scoping Information Document* (DART, 2005) will be scrutinized during scoping, and incorporated by reference into the EIS, as appropriate. All documents pertaining to this study are available on line at <http://www.dart.org/nwdfwcorridor.asp>. In addition, information regarding DART's ongoing System Planning effort can be found at <http://www.dart.org/transitsystemplan2030.asp>.

The MIS and the *DFW International Airport Rail Planning and Implementation Study* are expected to contribute to the statement of the project's purpose and need, and to the evaluation of transportation systems management alternatives. The impacts of each alternative will be assessed, and, if necessary, the alternative will be revised or additional alternatives will be developed to avoid, minimize, and mitigate any adverse impacts.

In accordance with FTA policy, all Federal environmental laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality implementing NEPA (40 CFR parts 1500–1508, the joint FHWA/FTA environmental regulations (23 CFR part 771), the project-level conformity requirements of the Clean Air Act, Section 404 of the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act, Section 4(f) of the DOT Act, etc. will be addressed to the maximum extent practicable during the NEPA process.

After its publication, the Draft EIS will be available for public review and comment. One or more public hearings will be held during the Draft EIS public comment period. On the basis of the Draft EIS and comments received, the

preferred alternative will be further refined as necessary, and the Final EIS will be prepared.

Issued on: May 5, 2005.

Robert C. Patrick,

FTA Regional Administrator.

[FR Doc. 05-9389 Filed 5-10-05; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2005-21068]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension for collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 11, 2005.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Control Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Complete copies of each request for collection of information may be obtained at no charge from Mrs. Johanna Lowrie, NHTSA 400 Seventh Street, SW., Room 5311, NVS-111, Washington, DC 20590. Mrs. Lowrie telephone number is (202) 366-5269. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. in submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Vehicle Information for the General Public.

OMB Control Number: 2127-0629.

Affected Public: Manufacturers that sell motor vehicles in the United States under 10,000 lbs.

Abstract: NHTSA currently collects vehicle information through the Office of Vehicle Safety Compliance (OVSC) and through the Office of Crashworthiness Standards (OCWS). The information collected by OVSC and OCWS has been useful to the New Car Assessment Program (NCAP) in selecting vehicles for its crash testing programs as well as informing the public of vehicle safety features on the NHTSA Web site (<http://www.safercar.gov>). The public is still interested not only in crash test results and other vehicle ratings, but is also interested in information on the benefit and availability of safety features. NHTSA also needs safety feature information when it attempts to analyze petitions for rulemaking asking the agency to mandate certain safety features. Therefore the NCAP is asking

for an extension of the current Information Collection Request from OCWS (OMB # 2127-0629) "*Vehicle Information for the General Public*".

An example of the type of information we propose to collect includes: Specific advanced frontal air bags information that would include the number if air bag deployment stages; technologies air bag deployment is dependent upon; air bag on/off switch information; child restraint anchorages system information; seat belt information that would include pretensioner, load limiters or other energy management systems for the seat belt, seat belt extenders and adjustable upper belt anchorages; dynamic head restraints; side air bag information that would include where the side air bag is mounted, what type of side bag is mounted and whether the side air bags meet the requirements of the recommendations of the Technical Working Group on Out of Position Occupants (TWG); Automatic Door Lock (ADL) information; Electronic Stability Control (ESC); crash avoidance information, anti-theft devices, and Static Stability Rating (SSF) information.

NHTSA will use this information on the NHTSA Web site, in the "Buying a Safer Car" and "Buying a Safer Car for Child Passengers" brochures, other consumer publications, as well as internally for benefit analysis. NHTSA is making this burden easier by sending out formatted electronic files with the information request to facilitate submittal of the data.

Estimated Annual Burden: 924 hours.

Number of Respondents: 21.

Comments are invited on: Whether the extension of the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: May 6, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05-9391 Filed 5-10-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[U.S. DOT Docket Number NHTSA-2005-21133]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 11, 2005.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Donovan Green, Office of Crash Avoidance Standards, 400 Seventh Street, SW., DC 20590. Mr. Green's telephone number is (202) 493-0248. His FAX number is (202) 493-2739. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in

such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Tires and Rim Labeling.

OMB Control Number: 2127-0503.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Tire and Rim Manufacturers.

Form Number: This collection of information uses no standard forms.

Abstract: Each tire manufacturer and rim manufacturer must label their tire or rim with the applicable safety information. These labeling requirements ensure that tires are mounted on the appropriate rims; and that the rims and tires are mounted on the vehicles for which they are intended.

Estimated Annual Burden: 5,679,585 hours.

Estimated Number of Respondents: 6,673.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: May 6, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05-9392 Filed 5-10-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA-02-12087; Notice 3]

Century Products, Inc.; Appeal of Denial of Application for Decision of Inconsequential Noncompliance

Summary: Century Products, a Division of Graco Children's Products, Inc. ("Century Products" and "Graco"), of Macedonia, Ohio, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied Century Products' application that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," be deemed inconsequential as it relates to safety. This notice of receipt of Century Products' appeal is published in accordance with NHTSA regulations (49 CFR 556.5 and 556.7) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Dates: Comments must be received no later than June 10, 2005.

Addresses: You may submit comments identified by the DOT DMS docket number assigned this notice and listed above, by any of the following methods:

- Web site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: (202) 493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal

information provided. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 p.m., Monday through Friday, except Federal Holidays.

For Further Information Contact: For non-legal issues, you may contact Mike Huntley, Office of Crashworthiness Standards, at (202) 366–0029, and fax him at (202) 493–2739.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

Supplementary Information: Paragraph S5.1.1 of FMVSS No. 213 states that when a child restraint system is tested in accordance with S6.1, it shall “[e]xhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than ¼ inch or surfaces with protrusions greater than ⅜ inch above the immediate adjacent surrounding contactable surface of any structural element of the system.” A “contactable surface” is defined in S4 as “any child restraint system surface (other than that of a belt, belt buckle, or belt adjustment hardware) that may contact any part of the head or torso of the appropriate test dummy, specified in S7, when a child restraint system is tested in accordance with S6.1.”

Century Products determined that as many as 185,175 child restraints fail to comply with FMVSS No. 213, and filed appropriate reports pursuant to 49 CFR part 573, “Defect and Noncompliance Responsibility and Reports.” Century Products also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—“Motor Vehicle Safety” on the basis that the noncompliance is inconsequential to safety.

Notice of receipt of the application was published in the **Federal Register** on May 17, 2002 (67 FR 35188). On October 24, 2003, NHTSA published a notice in the **Federal Register** denying Century Products’ application (Docket No. NHTSA–02–12087, Notice 2; 68 FR 61037; October 24, 2003), stating in part:

The requirements to be met in the dynamic testing of child restraints include: (1) Maintaining the structural integrity of the system, (2) retaining the head and knees of the dummy within specified excursion limits, and (3) limiting the forces exerted on the dummy by the restraint system. These requirements reduce the likelihood that a child using a complying child restraint system will be killed or injured by the collapse or disintegration of the system, or by contact with the interior of the vehicle, or by imposition of intolerable forces by the restraint system. Omission of any one of these three requirements would render incomplete the criteria for the quantitative assessment of the safety of a child restraint system and could lead to the design and use of unsafe restraints. It follows that the failure to comply with one or more of these three requirements will increase the likelihood that a child may be killed or injured in the event of a crash.

Graco’s dynamic crash test audit of 10 units selected at random confirmed that, in this limited series of tests, four of the selected units “exhibited wall separation and the presence of a void at the initiation point of the separation.” However, there is no way for either Graco, Century Products, or NHTSA to assure that the location, extent, and consequences of the structural failures seen in this limited series of tests is representative of the performance of *all* potentially defective units that have been manufactured.

In consideration of these and other factors presented by Century Products, NHTSA decided that the applicant had not met its burden of persuasion that the noncompliance it described was inconsequential to safety, and denied the application.

Century Products appealed the decision pursuant to 49 CFR 556.7. In its appeal dated November 12, 2003, Century Products submitted information regarding the predictability of the separation location that had not been presented in its original application as follows:

Century has determined through process (injection molding) experimentation that the location of the void could not be significantly affected. Process experimentations were performed by varying the injection pressure, hold pressure, melt temperature, mold temperature, and fill velocity. The void did not vary significantly through any of these process iterations. This analysis demonstrates that the void location is a result of the plastic flow characteristics of the shell. Since it has been shown that the plastic flow in the tool cannot be significantly affected through processing parameters, we can conclude that the void location is predictable.

In order to evaluate the consequences of the wall separation, various diameter holes were drilled in the shell to simulate voids. When a void occurs outside of the identified location, there is no wall separation or effect on crash performance or FMVSS 213 compliance. To evaluate the size of the void

on the wall separation, Century Products varied the diameter of the hole. These test variations showed that the size of the void does not change the observed mode of wall separation.

Based upon the engineering development of the Subject Product and the nature of the crash dynamics, Century Products asserts that the location, extent and consequences of the wall separations in the Subject Products are such that there is no impact on the safety of the child in the infant seat or any passenger around the seat. When NHTSA initially proposed dynamic testing of child restraint systems in 1974, it did not propose allowing any separation of the shell wall. The agency modified its proposal in 1978 to allow partial separation. NHTSA explained:

One objective of the system integrity requirements is to prevent ejection from the restraint system. Another is to ensure that the system does not fracture or separate in such a way as to harm the child. To this end, this notice proposes that when a restraint system is dynamically tested with the appropriate dummy * * * seated in it, there would not be any complete separation of any load bearing structural element of the system or any partial separation exposing surfaces with sharp edges that may contact an occupant. * * * This change was made in response to the comment by most child restraint manufacturers that some separation might be purposefully designed into a restraint system to improve its energy absorption performance. (43 **Federal Register** 21470, 21473; May 18, 1978; Emphasis Added)

In the preamble to the final rule, NHTSA reiterated the purpose of this requirement: “During the dynamic testing, no load bearing or other structural part of any child restraint system shall separate so as to create jagged edges that could injure a child.” 44 **Federal Register** 72131, 72132 (Dec. 13, 1979). With respect to partial separations, therefore, the safety issue with which the agency was concerned when it adopted this dynamic performance standard was a wall separation that may result in “sharp edges that may contact an occupant” or “jagged edges that could injure a child.” As discussed, however, the partial separation experienced by the Subject Products will not result in such hazards. Each separation observed during Century Products’ testing occurred in a location under the seat pad.

Additionally, Century Products’ appeal raised an issue as to whether the wall separation observed by Century Products constitutes a noncompliance given the location and nature of the separations as described above. Century Products stated:

Lastly, upon Century Products’ review of Section S5.1.1 of FMVSS 213 and the results of its audit testing, Century Products is uncertain whether the wall separation observed by Century Products constitutes a noncompliance. The language of S5.1.1 states that the restraint shall “exhibit no *complete separation* of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than one-quarter inch or surfaces with *protrusions* greater than three-eighths inch above the

immediate adjacent surrounding *contactable surface* of any structural element of the system.” (Emphasis added.) Upon further review, it appears that the wall separations observed on the Subject Products may not fall within the scope of this language. Century Products’ testing showed *no complete separations, no protrusions, and no contactable surfaces* on the car seats that exhibited the wall separation.

At Century Products’ request, NHTSA representatives met with Century Products on April 27, 2004, to discuss the additional information provided in the November 2003 Century Products appeal. The agenda for this meeting has been placed in Docket NHTSA–02–12087. Following this meeting, Century Products conducted additional technical analyses to support the information provided in its November 2003 appeal, including (1) a Mold Flow analysis and (2) a finite element analysis of the shell portion of the subject child restraint. On July 16, 2004, Century submitted the results of these analyses to the agency. This information has also been placed in Docket NHTSA–02–12087.

Based upon these further analyses, Century Products concluded in its July 16, 2004 submittal that the subject child seats are fully compliant with FMVSS No. 213, and that the shell wall separation does not constitute a noncompliance. Century Products contends that the location of the crack does not constitute a noncompliance with S5.1.1(a) of FMVSS No. 213. Century Products states in its July 16, 2004 submittal:

In Century’s appeal to the denial of the Petition for Determination of Inconsequential Noncompliance, Century stated that, based upon the particular crack in the child seat, Century was uncertain whether this particular type of wall separation would constitute a noncompliance under Section S5.1.1 of FMVSS 213. Since providing the Agency with that statement, Century has carefully evaluated the nature of the crack and the applicable Standard and contends that the child seat is fully compliant. The particular provision in question is S5.1.1(a). The Standard requires that after the child restraint system has been tested, it shall meet the following requirement: “(a) Exhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with the radius of less than ¼ inch or surfaces with protrusions greater than 3/8 inch above the immediate adjacent surrounding contactable surface of any structural element of the system.”

No one has suggested that there was a “complete separation of any load bearing structural element.” There has been some partial separation in the testing, and the surface in question may have a radius of less than ¼ inch, but was not a “partial separation exposing * * * surfaces with a radius of less than ¼ inch. * * * If a partial separation existed, it was never

exposed as the word is used in S5.1.1(a). The substantial pad on the seat will keep the crack from coming in contact with any part of the dummy of child.

The Agency has defined “contactable surface.” It states: “Contactable surface means any child restraint system surface (other than that of a belt, belt buckle, or belt adjustment hardware) that may contact any part of the head or torso of the appropriate test dummy specified in S7, when a child restraint system is tested in accordance with S6.1.” (§ 571.213, S4) Using the definition of “contactable surface,” Century contends that the partial crack in the child restraint comes nowhere close to where the head or torso of the dummy would be placed.

* * * If the crack is not adjacent to the position of the dummy, due to the substantial seat pad, then “sharp edges” cannot come in contact with the occupant. As the clearly defined crack in our case does not come near the head or torso of the appropriate test dummy, Century contends that there can be no violation of S5.1.1(a).

Interested persons are invited to submit written data, views, and arguments on the appeal of Century Products described above. When the appeal is granted or denied, the notice will be published in the **Federal Register** pursuant to 49 CFR Part 556 and the authority indicated below.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 4, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–9390 Filed 5–10–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Literacy and Education Commission

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the Fifth Meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: The Fifth Meeting of the Financial Literacy and Education Commission will be held on Wednesday, May 25, 2005, beginning at 12 p.m. and ending at approximately 1 p.m.

ADDRESSES: The Fifth Meeting of the Financial Literacy and Education Commission meeting will be held in the Cash Room at the U.S. Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC. To be admitted to the

Treasury building, an attendee must RSVP by providing his or her name, organization, phone number, date of birth, Social Security number, and country of citizenship to the Department of the Treasury by e-mail at: FLECrsvp@do.treas.gov, or by telephone at: (202) 622–1783 (not a toll-free number) not later than 5 p.m. on Thursday, May 19, 2005.

FOR FURTHER INFORMATION CONTACT: For additional information regarding admittance to the Treasury building, contact Eric Kjellander by e-mail at: eric.kjellander@do.treas.gov or by telephone at (202) 622–5770 (not a toll-free number).

Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury’s Office of Financial Education may be obtained through the Office of Financial Education’s Web site at: <http://www.treas.gov/financialeducation>.

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) (Pub. L. 108–159), established the Financial Literacy and Education Commission (the “Commission”) to improve financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the head of the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Reserve; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Securities and Exchange Commission; the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs; the Federal Trade Commission; the General Services Administration; the Small Business Administration; the Social Security Administration; the Commodity Futures Trading Commission; and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months, with its first meeting occurring within 60 days of the enactment of the FACT Act. The FACT Act was enacted on December 4, 2003.

The Fifth Meeting of the Commission, which will be open to the public, will be held in the Cash Room at the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC. The room will accommodate 80 members of the public. Seating is available on a first-come

basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and/or special guest presenters.

Dated: May 5, 2005.

Dan Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. 05-9342 Filed 5-10-05; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 7, 2005 from 11 a.m. to 12 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or (954) 423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, June 7, 2005, from 11 a.m. to 12 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or (954) 423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or (954) 423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: May 5, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5-2308 Filed 5-10-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0580]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine children with spina bifida eligibility for reimbursement of transportation expenses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0580" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the

quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Transportation Expense Reimbursement (38) CFR 21.8370.

OMB Control Number: 2900-0580.

Type of Review: Extension of a currently approved collection.

Abstract: Children of Vietnam veterans born with spina bifida and receiving vocational training or seeking employment may request reimbursement for transportation expenses. To be eligible, the child must provide supportive documentation of actual expenses incurred for the travel. VA uses the information collected to determine if the child is unable to pursue a vocational training or employment without travel assistance.

Affected Public: Individuals or households.

Estimated Annual Burden: 63 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 50.

Estimated Total Annual Responses: 650.

Dated: April 29, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. E5-2301 Filed 5-10-05; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Human Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Human Resources Management (HRM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

new collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to process current and former employee's claims for restored annual leave charged on a nonworkday while on military active duty.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2005.

ADDRESSES: Submit written comments on the collection of information to Katie McCullough-Bradshaw, Human Resources Management (058), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail Katie.McCullough-Bradshaw@mail.va.gov. Please refer to "OMB Control No. 2900-New" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Katie McCullough-Bradshaw at (202) 273-9836 or fax (202) 275-7607.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, HRM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of HRM's functions, including whether the information will have practical utility; (2) the accuracy of HRM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Claim for Credit of Annual Leave, VA Form 0862.

OMB Control Number: 2900-New.

Type of Review: New collection.

Abstract: Current and former employee's who were charged annual leave on a nonworkday while on active military duty complete VA Form 0862 to request restoration of annual leave. Those employees who separated or retired from VA will receive a lump sum payment for any reaccredited annual leave. The claimant must provide documentation supporting the period that he or she were on active military

duty during the time for which they were charged annual leave on a nonworkday.

Affected Public: Individuals or households and Federal Government.

Estimated Annual Burden: 3,375 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 13,501.

Dated: April 29, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. E5-2302 Filed 5-10-05; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0161]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, fax (202) 273-5981 or e-mail:

denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0161."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0161" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Medical Expense Report, VA Form 21-8416.

OMB Control Number: 2900-0161.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21-8416 is completed by beneficiaries in receipt of or claiming income-based benefits to report medical expenses paid in connection with claims for pension and other income-based benefits. Unreimbursed medical expenses paid by a beneficiary or claimant may be excluded from their countable income. VA uses the data collected to determine the claimant's entitlement to improved pension and the appropriate rate payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2005, at page 1934.

Affected Public: Individuals or households.

Estimated Annual Burden: 48,200 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 96,400.

Dated: April 29, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. E5-2303 Filed 5-10-05; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0629]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, fax (202) 273-5981 or e-mail to: denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0629."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316. Please refer to "OMB Control No. 2900-0629" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Extended Care Services, VA Form 10-10EC.

OMB Control Number: 2900-0629.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10-10EC is used to gather current income and financial information from nonservice-connected veterans and their spouse when applying for extended care services and to establish a co-payment agreement for such services. VA provides extended care to non-service connected veterans who are unable to defray the necessary expenses of care if their income is not greater than the maximum annual pension rate. VA uses the data collected to establish the veteran's eligibility for extended care services, financial liability, if any, of the veteran to pay if accepted for placement or treatment in extended care services, and to determine the appropriate co-payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 5, 2005, at pages 939-940.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 9,000 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

Dated: April 29, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. E5-2304 Filed 5-10-05; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0101]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, FAX (202) 273-5981 or e-mail: denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0101."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0101" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Eligibility Verification Reports (EVR).

a. Eligibility Verification Report Instructions, VA Form 21-0510.

b. Old Law and Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21-0512S-1.

c. Old Law and Section 306 Eligibility Verification Report (Veteran), VA Form 21-0512V-1.

d. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21-0513-1.

e. DIC Parent's Eligibility Verification Report, VA Forms 21-0514 and 21-0514-1.

f. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Forms 21-0516 and 21-0516-1.

g. Improved Pension Eligibility Verification Report (Veteran With

Children), VA Forms 21-0517 and 21-0517-1.

h. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Forms 21-0518 and 21-0518-1.

i. Improved Pension Eligibility Verification Report (Child or Children), VA Forms 21-0519C and 21-0519C-1.

j. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Forms 21-0519S and 21-0519S-1.

OMB Control Number: 2900-0101.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses Eligibility Verification Reports (EVR) forms to verify a claimant's continued entitlement to benefits. Claimants who applied for or receives Improved Pension or Parents' Dependency and Indemnity Compensation must promptly notify VA in writing of any changes in entitlement factors. EVRs are required annually by beneficiaries whose social security number (SSN) or whose spouse's SSN is not verified, or who has income other than Social Security. Recipients of Old Law and Section 306 Pension are no longer required to submit annual EVRs unless there is a change in their income.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 12, 2004, at pages 65504-65505.

Affected Public: Individuals or households.

Estimated Annual Burden: 113,075 hours. The annual burden for VA Forms 21-0512S-1, 21-0512V-1, 21-0513-1, 21-0514, 21-0514-1, 21-0516, 21-0516-1, 21-0518, 21-0518-1, 21-0519C, and 21-0519C-1 is 9,8775 and 14,300 for VA Forms 21-0517, 21-0517-1, 21-0519S, and 21-0519S-1.

Estimated Average Burden Per Respondent: The estimated burden respondent for VA Forms 21-0512S-1, 21-0512V-1, 21-0513-1, 21-0514, 21-0514-1, 21-0516, 21-0516-1, 21-0518, 21-0518-1, 21-0519C, and 21-0519C-1 is 30 minutes and 40 minutes for VA Forms 21-0517, 21-0517-1, 21-0519S, and 21-0519S-1.

Frequency of Response: Annually.

Estimated Number of Respondents: 219,000. The number of respondents for VA Forms 21-0512S-1, 21-0512V-1, 21-0513-1, 21-0514, 21-0514-1, 21-0516, 21-0516-1, 21-0518, 21-0518-1, 21-0519C, and 21-0519C-1 is 197,550

and 21,450 for VA Forms 21-0517, 21-0517-1, 21-0519S, and 21-0519S-1.

Dated: April 29, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. E5-2305 Filed 5-10-05; 8:45 am]

BILLING CODE 8320-01-P

Corrections

Federal Register

Vol. 70, No. 90

Wednesday, May 11, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

Wednesday, April 27, 2005 make the following correction:

On pages 21834-21835, the chart is corrected to read as set forth below:

SOCIAL SECURITY ADMINISTRATION

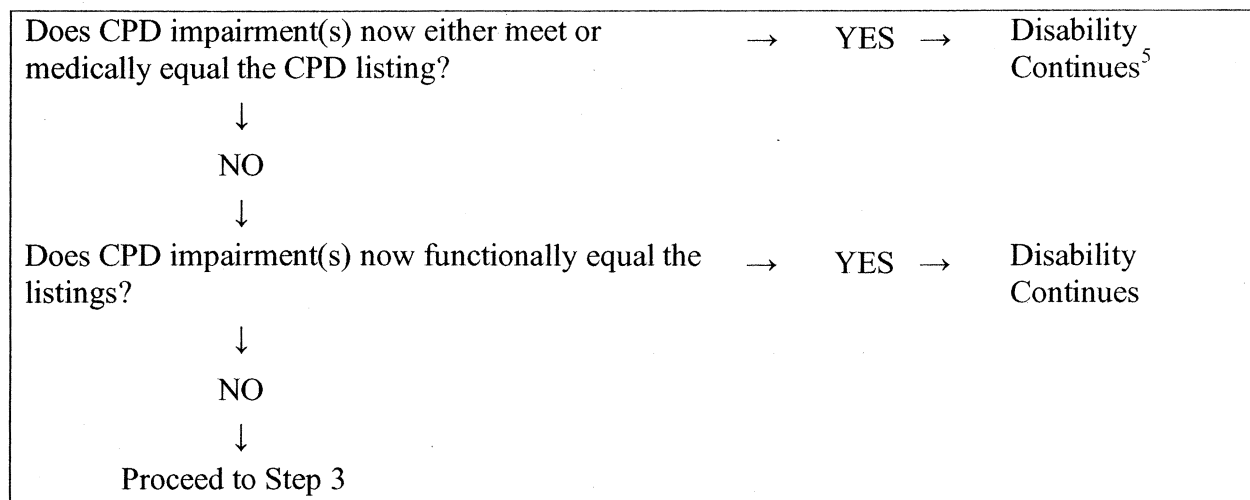
**Social Security Ruling, SSR 05-03p.;
Title XVI: Determining Continuing
Disability at Step 2 of the Medical
Improvement Review Standard
Sequential Evaluation Process for
Children Under Age 18—Functional
Equivalence**

Correction

In notice document 05-8390
beginning on page 21833 in the issue of

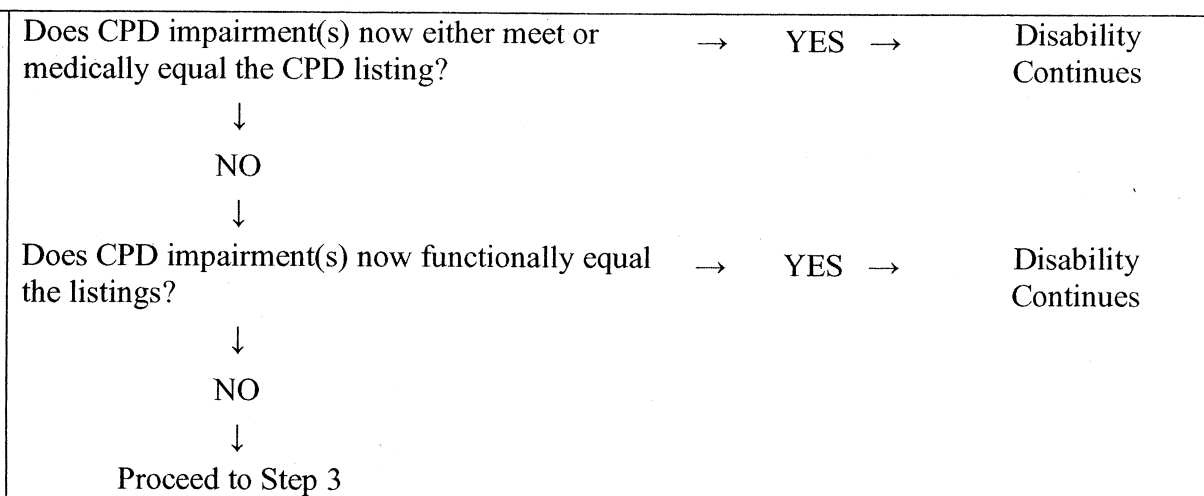
Chart: This chart summarizes the explanations above. Follow a. or b. as appropriate.

a. If the CPD was made before January 2, 2001:

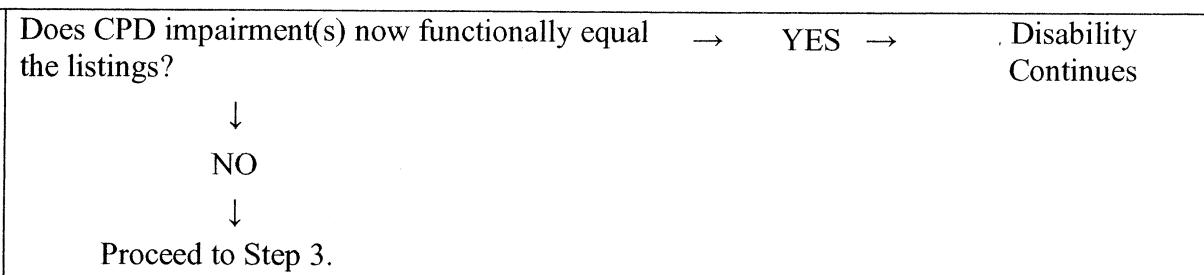


b. If the CPD was made on or after January 2, 2001, follow (1) or (2) as appropriate:

(1) CPD impairment(s) met or medically equaled a listing:



(2) CPD impairment(s) functionally equaled the listings:



⁵ The conclusion that disability continues here and elsewhere on this chart is subject to any applicable exceptions to the MIRS standard. See footnote 1 above.



Federal Register

**Wednesday,
May 11, 2005**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Review of Native Species That Are
Candidates or Proposed for Listing as
Endangered or Threatened; Annual Notice
of Findings on Resubmitted Petitions;
Annual Description of Progress on Listing
Actions; Proposed Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species.

The CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number to each species. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms, previously called candidate forms) for each candidate species.

We request additional status information that may be available for the 286 candidate species. We will consider this information in preparing listing documents and future revisions to the notice of review, as it will help us in monitoring changes in the status of candidate species and in management for conserving them. We also request information on additional species that we should include as candidates as we prepare future updates of this list.

This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened

Wildlife and Plants during the period May 5, 2004, through May 2, 2005.

DATES: We will accept comments on the Candidate Notice of Review at any time.

ADDRESSES: Submit your comments regarding a particular species to the Regional Director of the Region identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species. You may submit comments of a more general nature to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (703/358-2171). Written comments and materials received in response to this notice will be available for public inspection by appointment at the Division of Conservation and Classification (for comments of a general nature only) or at the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION**.

Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Division of Conservation and Classification, Arlington, Virginia (see address above), or on our Internet Web site (<http://endangered.fws.gov/candidates/index.html>).

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chris Nolin, Chief, Division of Conservation and Classification (703-358-2171).

SUPPLEMENTARY INFORMATION:**Candidate Notice of Review***Background*

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing

actions. We maintain this list for a variety of reasons: to notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to provide information that may stimulate conservation efforts that will remove or reduce threats to these species; to solicit input from interested parties to help us identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to solicit necessary information for setting priorities for preparing listing proposals.

Table 1 includes 286 species that we regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists), as well as 21 species for which we have published proposed rules to list as threatened or endangered species. Most of these proposed species were previously identified in the 2003 CNOR (69 FR 24876, May 4, 2004). We encourage consideration of these species in conservation planning, as well as other environmental planning, such as in environmental impact analysis done under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500-1508) and in local and statewide land use planning. Table 2 contains eight species we identified as candidates or as proposed species in the May 4, 2004, CNOR that we now no longer consider candidates. This includes two species that we listed as threatened since May 4, 2004, one species that we withdrew the proposed rule, one species that we removed from candidacy through a notice published on August 18, 2004 (69 FR 51217), and four species that we are removing from candidacy through this notice. The Region having lead responsibility for the particular species maintains updated records of information on candidate species.

Previous Notices of Review

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94-51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. A new comprehensive notice of review for native plants, which took into account the earlier Smithsonian

report and other accumulated information, superseded the 1975 notice on December 15, 1980 (45 FR 82479). On November 28, 1983 (48 FR 53640), a supplemental plant notice of review announced changes in the status of various species. We published complete updates of the plant notice on September 27, 1985 (50 FR 39526); February 21, 1990 (55 FR 6184); September 30, 1993 (58 FR 51144); and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596); September 19, 1997 (62 FR 49398); October 25, 1999 (64 FR 57534); October 30, 2001 (66 FR 54808); June 13, 2002 (67 FR 40657); and May 4, 2004 (69 FR 24876). Additionally, on January 8, 2001 (66 FR 1295), we published our resubmitted petition finding for one plant species having an outstanding "warranted-but-precluded finding" on a petition to list.

We published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). We published an initial comprehensive review for invertebrate animals on May 22, 1984 (49 FR 21664). We published a combined animal notice of review on January 6, 1989 (54 FR 554), and with minor corrections on August 10, 1989 (54 FR 32833). We again published comprehensive animal notices on November 21, 1991 (56 FR 58804); November 15, 1994 (59 FR 58982); and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596); September 19, 1997 (62 FR 49398); October 25, 1999 (64 FR 57534); October 30, 2001 (66 FR 54808); June 13, 2002 (67 FR 40657); and May 4, 2004 (69 FR 24876). Additionally, on January 8, 2001 (66 FR 1295), we published our resubmitted petition findings for 25 animal species having outstanding "warranted-but-precluded" petition findings as well as notice of one candidate removal.

This revised notice supersedes all previous animal, plant, and combined notices of review.

Summary

Since publication of the 2003 CNOR on May 4, 2004 (69 FR 24876), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species and reevaluated the relative listing priority assignment of each species. A candidate species is assigned a listing priority number (LPN) of 1–12 depending on the magnitude of threats, the imminence of threats, and by its taxonomic status in accordance with our priority guidance as published on

September 21, 1983 (48 FR 43098). We also evaluated the need to emergency-list any of these species, particularly species with high priorities (*i.e.*, species with listing priority numbers of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk. As of May 2, 2005, 18 animals are proposed for endangered status; 2 animals are proposed for threatened status (not including proposed reclassifications of endangered species); 1 animal is proposed for threatened-due-to-similarity-of-appearance status; and 145 plant and 141 animal candidates are awaiting preparation of proposed rules (see Table 1). Table 2 includes eight species we previously classified as either proposed for listing or candidates that we no longer classify in those categories.

Summary of New Candidates

Below we present brief summaries of five new candidates, including one species of fish, one insect, one crustacean, and two plants. Complete information, including references, can be found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from our Internet Web site (<http://endangered.fws.gov/candidates/index.html>).

Fish

Sicklefin redhorse (*Moxostoma sp.*)—The sicklefin redhorse is a medium-sized redhorse fish, reaching up to about 18 inches, with an elongate, somewhat compressed body and a highly falcate (sickle-shaped) dorsal fin and are found in North Carolina, Tennessee and Georgia. Detailed morphological and genetic studies have concluded that the sicklefin redhorse is a distinct species. The species is currently known to occupy cool to warm, moderate gradient creeks and rivers, and, during parts of its early life stages, large reservoirs. In streams, it is most often observed in riffles, runs, and well-flowing pools. It feeds and spawns in gravel, cobble, and boulder substrates with no, or very little, silt overlay.

Like many other redhorse species, the sicklefin redhorse is known mainly from flowing streams; however, also like many other redhorse species, the sicklefin redhorse appears to have adapted to spending at least part of its life in the near-shore areas of impounded streams where pre-spawning age sicklefins have been collected, mainly near the mouth of streams that feed the reservoirs. Current observations indicate that adults of the

species are year-round residents of rivers and large creeks and that young, juveniles, and subadults occupy primarily the lower reaches of creeks and rivers and near-shore portions of certain reservoirs. It is likely that after emerging from the stream substrata, many of the larvae and postlarvae are carried downstream to the mouths of streams or into reservoirs. Newly mature fish (≥ 5 years of age) appear to migrate from the reservoirs to spawn and then remain in the streams with the other adults.

Based on an analysis of preserved specimens, the species is relatively long lived, with both sexes living at least to 17 years of age; however, based on the size of fish seen in the streams, some individuals probably live for over 20 years. Spawning typically occurs over cobble, with usually only a small portion of sand and gravel, in moderate to fast runs in open areas and pockets formed by boulders and outcrops. The spawning period for the sicklefin runs from late April through mid-May.

Past and recent collection records of the sicklefin redhorse, together with what is known about the habitat utilization of the species, indicate that the sicklefin redhorse once inhabited the majority, if not all, of the rivers and large creeks in the Blue Ridge portion of the Hiwassee and Little Tennessee River systems in North Carolina, Tennessee, and Georgia. Current estimates are that the species has apparently been eliminated from roughly 60 percent of its former range. This is a conservative estimate that: (1) Includes several miles of the Hiwassee and Fontana Reservoirs within the present range of the species (although portions of these reservoirs appear to provide survivable habitat for juvenile sicklefins, they do not provide foraging or spawning habitat for adults of the species); and (2) does not include some of the higher reaches of some of the creeks where the sicklefin redhorse currently occurs in their lowermost reaches. Additionally, the Cheoah River, Cullasaja River, Cartoogechaye Creek, Oconaluftee River, and several other large tributaries in the Hiwassee and Little Tennessee River systems may also have once been inhabited by the sicklefin redhorse.

Impacts associated with the construction and operation of dams for hydropower generation on the streams inhabited by the species is the primary cause of the extirpation of the sicklefin redhorse throughout the majority of its former range. These impoundments created by the dams eliminate spawning and foraging habitat of the adult sicklefin redhorse by changing the conditions from flowing to still water.

Water depth increases, flow decreases, and silt accumulates on the bottom. Impoundments not only destroy riverine habitat within the impounded portion of the stream, but they alter the quality and stability of the downstream reaches by adversely affecting water flow regimes, velocities, temperature, chemistry, and nutrient cycles. Dams that operate by releasing cold water from near the bottom of the reservoirs lower the water temperature downstream, changing downstream reaches from warm-or cool-water streams to cold-water streams and affecting their suitability for many of the native species historically inhabiting these stream reaches. The effects of impoundments result in changes in fish and macroinvertebrate communities (macroinvertebrates are the main prey items of the sicklefin), species requiring clean gravel and sand substrates are lost. In addition, dams result in the fragmentation and isolation of populations of remaining populations of the sicklefin redhorse, acting as effective barriers to the natural upstream and downstream expansion or recruitment of the species. Natural upstream and downstream population expansion and repopulation of the majority of the species' former range are restricted because of the barriers posed by the existing dams and impacts to the tailwaters associated with the current operation of the dams. As a result, the Hiwassee River system and Little Tennessee River system populations are isolated from each other. This isolation decreases their ability to respond to nature- and human-induced changes in their environment and increases their vulnerability to extirpation. Wastewater discharges, together with impacts to water and habitat quality associated with a variety of other land disturbance activities carried out without adequate measures to control storm water and erosion, also played a significant role in the decline of the species.

Many of the same factors believed to have contributed to the extirpation of the species from much of its former range potentially threaten these remaining populations. All of the surviving occurrences of the sicklefin redhorse are restricted to relatively short reaches of the streams they occupy, primarily due to existing dams. Their limited distributions make them extremely vulnerable to the effects from single catastrophic events (such as toxic chemical spills, major sedimentation events, channel modification, etc.) and/or the cumulative effects of lesser impacts to their habitat and numbers. Although the majority of the streams still occupied by the species occur in

areas that are presently primarily rural, many of the communities within the watersheds of these streams are experiencing increasing development pressure, both commercial and residential, and are developing plans for upgrading and improving their infrastructure (e.g., roads, water supplies, sewer/wastewater treatment systems, etc.) to provide for increased densities of development.

Because of the entire current range of the sicklefin redhorse is affected by the threats described above, the magnitude of the threat to the species is high. Although the threats faced by the sicklefin redhorse are significant, it is not anticipated that the species will be subject to these threats in the immediate future. Therefore, we assigned a listing priority of 5 to this species.

Insects

Miami blue butterfly (*Cyclargus thomasi bethunebakeri*)—The Miami blue is a coastal butterfly that occurs at the edges of tropical hardwood hammocks (forests) and occasionally in tropical pinelands and along trails, utilizing open sunny areas in southern Florida. The geographic range of this butterfly once extended from the Florida Keys north along the coasts to about St. Petersburg and Daytona, Florida. Although little specific historic information exists on the abundance and distribution patterns of the Miami blue, it is clear that the occurrence of this butterfly throughout its historic range has been significantly reduced, with only small remnants remaining. Despite extensive surveys of known suitable habitat and/or historical records, the species is now found only in a single metapopulation, located at Bahia Honda Key State Park (Park), with a few immature individuals on West Summerland Key. This metapopulation is comprised of thirteen distinct colonies in the Park.

In November 2002, the Service worked with researchers and the State to establish a captive propagation program for the Miami blue due to the low estimated population at its only known location. As of December 2004, the captive colony had numerous generations, with hundreds of individuals in captivity. Efforts have been undertaken to reintroduce captive-bred Miami blues to Federal lands (i.e., Everglades National Park and Biscayne National Park) within the butterfly's historic range. However, subsequent monitoring has indicated an inconsistent or sporadic presence of only a small number of individuals of varying life stages at release sites. Monitoring results do not indicate that

the Miami blue has become established at any of the release sites.

Extensive losses of the species' habitat and fragmentation of remaining patches, along with mosquito control activities, are the likely cause of the species' decline. Although many areas on public lands may offer suitable nectar and other host plants, the extremely limited dispersal ability of the species likely prevents these areas from becoming occupied and used. The Miami blue butterfly is threatened by the combined influences of habitat destruction and modification, mosquito control activities, and loss of genetic diversity associated with isolated populations. The possibility for catastrophic events (e.g., hurricanes) also poses a threat to the survival of this butterfly. In addition to these threats, habitat loss and fragmentation, fire suppression, displacement of native host plants by invasive exotic species, detrimental land management practices, accidental harm from humans, and inadequate regulatory protection pose threats to the species throughout the species historic range. Predation, accidental harm or habitat destruction, and illegal collection may also pose a threat to the Miami blue due to the small population size at the known locations. Due to nonimminent threats of high magnitude as described above, we assigned a listing priority number of 6 to this subspecies.

Crustaceans

Diminutive amphipod (*Gammarus hyalleloides*)—The diminutive amphipod is a small amphipod that is ranked as "critically endangered throughout its range" (G1) by NatureServe and "critically endangered throughout its range" (S1) by the State of Texas. Based on surveys and genetic analysis, this species only occurs in four spring outflows in the Toyah Basin, Balmorhea area of Reeves and Jeff Davis Counties, Texas; these springs are all within about 8 miles (13 km) of each other within the San Solomon Spring System. In addition to being an important habitat for rare aquatic fauna, this spring system is also an important source of irrigation water for the farming communities in the Toyah Basin. The primary threat to the species is the loss of surface flows due to declining groundwater levels from drought and pumping for agricultural production. The natural ciénega habitats (marshland communities associated with perennial springs and headwater streams) of the Balmorhea area have been mostly altered over time to accommodate agricultural irrigation. Most significant was the draining of wetland areas and the modification of spring outlets for

development of human use of the water resources. Although the land surrounding the amphipod's current habitat is owned and managed by The Nature Conservancy, Bureau of Reclamation, and Texas Parks and Wildlife Department, the water needed to maintain its habitat has declined due to a reduction in spring flows, possibly as result of private groundwater pumping in areas beyond that are controlled by these landowners. Pumping of the regional aquifer system for agricultural production of crops has resulted in the drying of other springs in this region, including Comanche Springs, which was once a large surface spring in Fort Stockton, Texas. Another example is Phantom Lake Spring, one of the sites of occurrence for the amphipod, which ceased flowing in 2000; aquatic habitat is now supported only by a pumping system. Another threat to amphipod habitat is the potential degradation of water quality from point and nonpoint pollutant sources. This pollution can occur either directly into surface water or indirectly through contamination of groundwater that discharges into spring run habitats used by the amphipod. The primary threat for contamination comes from herbicide and pesticide use in nearby agricultural areas.

Although the physical condition of the areas where this species is found has changed dramatically over time from human actions, at least a portion of the native biota remain. However, three of the four known current occurrences of the species are in degraded habitats (the exception is East Sandia Spring) because the natural conditions of the springs have been substantially modified for human use. Any additional modifications to the spring flow habitats will further threaten the species. Therefore, with imminent threats of high magnitude, we assign this species a listing priority number of 2.

Flowering Plants

Ipomopsis polyantha (Pagosa skyrocket)—Pagosa skyrocket is an extremely narrow endemic with a global distribution limited to a 13-mile range on outcrops of Pagosa-Winifred soils derived from Mancos shale in Archuleta County, Colorado. The total population size is estimated to be between 2,246 and 10,626 plants. It is ranked as "critically endangered throughout its range" (G1) by NatureServe and "critically endangered in the state" (S1) by the Colorado Natural Heritage Program. Populations are on federal highway rights of way and private lands. Much of the occupied habitat on private lands has been subdivided and

is being rapidly developed. There are no plans being implemented for the management, protection, or conservation of the species. The Colorado Rare Plant Technical Committee, including botanists from the Colorado Natural Heritage Program, has identified *I. polyantha* as the species most in need of protection and recovery efforts in 2005 in Colorado. We assign this species a listing priority number 2 based on imminent habitat destruction throughout its narrow range.

Solidago plumosa (Yadkin River goldenrod)—A member of the Asteraceae family, *Solidago plumosa* is endemic to the Yadkin River in North Carolina and was originally described from the Narrows Canyon and Falls area of this river in 1894. Currently, plants are known to exist in only two locations, located approximately 2 kilometers apart along the shoreline of the Yadkin River in North Carolina. This species is ranked as "critically endangered throughout its range" (G1) by NatureServe and "critically endangered in the state" (S1) by the North Carolina Natural Heritage Program. The historical and current impacts resulting from the construction and operation of reservoirs appear to be similar at each of these two surviving occurrences of the species, as does the threat posed by invasive, nonnative vegetation. The species appears to persist in areas subjected to periodic water scouring of a velocity sufficient to prevent the establishment of other species without eliminating previously established *Solidago plumosa* plants (the age of which is unknown). At the same time, although dependent upon some level of flood scouring, the species does not appear to be tolerant of prolonged inundation as it does not occur in frequently flooded habitats. Therefore, the availability of suitable habitat and the fate of all known populations of this species are primarily determined by the manner in which the Narrows and Falls Reservoirs are operated. To the extent that operation of hydroelectric facilities could be modified in the future to enhance conditions for *Solidago plumosa*, the effects of reservoir construction and operation are not believed to be permanent or irreversible. Thus, the magnitude of these threats may be substantially reduced. In light of all of these considerations, the magnitude of threats to the species is estimated to be "moderate to low."

One of the primary threats that affected the species (construction of Narrows and Falls Reservoirs and the resulting inundation of suitable habitat) has already occurred. However, operation of these reservoirs continues

to influence the habitat occupied by the species, and may be facilitating (via a reduction in the frequency and magnitude of scouring events) the establishment and spread of mimosa (*Albizia julibrissin*) (an invasive, nonnative shrub). Because mimosa is already shading established *Solidago plumosa* plants, it may potentially be competing for seed germination and seedling establishment sites. The threats posed by lack of scouring and the subsequent establishment and spread of mimosa are ongoing and, therefore, considered to be imminent. The threat posed by the nonnative hybrid bush honeysuckle (*Lonicera x bella*) is more remote, as the species has not yet established in habitats occupied by *Solidago plumosa*. We conclude that the threats affecting the species are of a moderate to low magnitude, but are imminent, leading to a listing priority number of 8.

Summary of Listing Priority Changes in Candidates

We reviewed the listing priority number for all candidate species and are changing the numbers for the following species. Some of the changes reflect actual changes in either the magnitude or imminence of the threats, and in two cases, reflect a change in the taxonomy of the species. For some species, our changes in the listing priority number reflect efforts to ensure national consistency as well as closer adherence to the 1983 guidelines in assigning these numbers, rather than a change in the nature of the threats.

Mammals

Mazama pocket gopher (*Thomomys mazama* ssp. *couchi*, *glacialis*, *louiei*, *melanops*, *pugetensis*, *tacomensis*, *tumuli*, and *yelmensis*)—Candidate status applies to each of these eight subspecies of *Thomomys mazama*, all of which are associated with glacial outwash prairies in western Washington. We do not include other *T. mazama* subspecies that occur in Oregon and California (commonly referred to as "western pocket gophers") as candidate species. Except as otherwise noted, the following description applies to each of the subspecies. Most populations are small, isolated, and patchily distributed. There are no historical data and scant quantitative data on current populations. Several populations are now extirpated. Two, and possibly three, of the subspecies may be extinct (*T. m. louiei*, *T. m. tacomensis*, and *T. m. tumuli*).

Threats include destruction and alteration of prairie habitat due to

development, altered fire regimes, and encroachment of native and nonnative plants; conflicts with military activities and airport development and maintenance activities; house cat predation; consideration as agricultural pests; and vulnerability to naturally occurring, random events. The magnitude of threats is high due to patchy and isolated population distributions in habitats highly desirable for development and subject to a wide variety of human activities that permanently alter the habitat. There are high and constant invasions of plant species altering the quality of remaining habitat. Loss of any of the subspecies will reduce the genetic diversity and likelihood of the continued existence of the species in Washington. Threats are imminent because many of those listed above are ongoing. It is likely that the extirpation of some populations and the extinction of two, and possibly three, subspecies are the result of one or more of these threats affecting each of these populations and subspecies. One subspecies is threatened by gravel pits, and two subspecies are located on airports with planned development. Because of the increased imminence of threats, we changed the listing priority number for each of the eight subspecies of the Mazama pocket gopher from a 6 to a 3.

Palm Springs (Coachella Valley) round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*)—The Palm Springs round-tailed ground squirrel is one of four recognized subspecies of round-tailed ground squirrels. The range for the Palm Springs round-tailed ground squirrel corresponds to the Coachella Valley region in Riverside County, California. Primary habitat for the Palm Springs round-tailed ground squirrel in the Coachella Valley is the mesquite sand dune/hummock community. The species also is found in smaller numbers in creosote communities on sand dunes and hummocks. Approximately 90 percent of the mesquite hummock communities in the Coachella Valley are estimated to have been lost since 1939, a reduction from 3,363 hectares (8,309 acres) to 352 hectares (870 acres). Future development threatens more mesquite communities occupied by the Palm Springs round-tailed ground squirrel. The largest unprotected mesquite community in Indio Hills was recently developed, effectively eliminating a large ground squirrel population. The rapid growth of urban development in the Coachella Valley is threatening existing ground squirrel populations with habitat fragmentation.

A recent taxonomic study that examined the morphology of this subspecies as well as those of adjacent populations of another subspecies (*S. t. tereticaudus*) revealed that the original classification of this subspecies may be in question. Pelage (hair) color was found to be different among the two subspecies. In addition, this study also discovered that putative *S. t. tereticaudus* populations in Death Valley, the western central region of the Mojave Desert, and Borrego Valley were more similar in pelage color to *S. t. chlorus* in the Coachella Valley than other *S. t. tereticaudus* populations from the Colorado River region of eastern Imperial and Riverside Counties. We are awaiting peer review of this report before we take action to reconsider whether this subspecies is valid. In the meantime, we are seeking funding to pursue a genetic study that will determine this species' taxonomy based on DNA. Based on our evaluation that the threats pose an imminent risk of a high magnitude, we changed the listing priority number for this subspecies from a 6 to a 3.

Washington ground squirrel (*Spermophilus washingtoni*)—This species is one of the smallest members of the subgenus *Spermophilus*, and is found within the shrub-steppe habitat of the Columbia Basin ecosystem of Washington and Oregon. The soil types used by the squirrels are distributed sporadically within the species' range, and have been seriously fragmented by human development in the Columbia Basin, particularly by conversion to agricultural use. Where agriculture occurs, little evidence of ground squirrel use has been documented, and reports indicate that ongoing agricultural conversion eliminates Washington ground squirrel habitat. The most contiguous, least-disturbed expanse of suitable Washington ground squirrel habitat, and likely the densest distribution of colonies within the range of the species, occurs on the Boeing site and Boardman Bombing Range in Oregon, and on Federal and State-owned land in Washington. However, in Washington, recent declines in some colonies have been precipitous and the reasons for them are unknown. In 2001, for instance, entire colonies of ground squirrels were no longer occupied on the Columbia National Wildlife Refuge and Seep Lakes Management Area near Othello, Washington, despite the State protected status of the species in the area. Current and potential threats to the continuing survival of the species include the following: habitat loss from the conversion of potential and known

habitat to agricultural use, predation, recreational shooting, disease, potential effects of pesticides, and potential effects of drought on forage quality and quantity. However, while the magnitude of threats remains high for the Washington ground squirrel, the immediacy of threats has declined in the past year. The majority of existing colonies (in Oregon and throughout the species' current range) are located on the Boardman Bombing Range and the Boeing tract, which contain the largest contiguous suitable Washington ground squirrel habitat. Although Boardman Bombing Range activities are not certain, they are not expected to change significantly in the foreseeable future.

In 2003, the largest threat to colonies in Oregon was the imminent conversion of the Boeing tract for agriculture. This would have resulted in the permanent loss of habitat for one of the largest contiguous blocks of Washington ground squirrels. However, in 2004, a 25-year Multi-Species Candidate Conservation Agreement with Assurances (CCAA) was signed by Threemile Canyon Farms, The Nature Conservancy, Portland General Electric, Oregon Department of Fish and Wildlife, and the Service. The parties will implement habitat management, operational modifications, and conservation measures for four non-listed species, including the Washington ground squirrel, on approximately 93,000 ac (37,636 ha) enrolled in the CCAA. Under this agreement, Threemile Canyon Farms placed 22,600 ac (9,146 ha) of the Boeing tract into a permanent Oregon Department of Fish and Wildlife Conservation Easement (Boardman Conservation Area). Also, Portland General Electric identified 888 ac (356 ha) for management as part of the Conservation Area for the duration of the CCAA. The Boardman Conservation Area will be managed by TNC with the goal to maintain and improve where feasible the integrity of existing native communities and associated species covered by the CCAA, including the Washington ground squirrel. All but two known sites and the majority of suitable habitat on the Boeing tract are located on the Boardman Conservation Area and therefore are protected from irreversible habitat modification. Based on our current evaluation of threats, we changed the listing priority number from 2 to 5 for this species as the threats are no longer imminent.

Birds

Spotless crane (*Porzana tabuensis*), American Samoa Distinct Population Segment (DPS)—The genus *Porzana* is widespread in the Pacific, where it is

represented by numerous island-endemic and flightless species (many of which are extinct as a result of anthropogenic disturbances) as well as several common and cosmopolitan species such as the common crane. The spotless crane is found in the Philippines, Australia, Fiji, Tonga, Society Islands, Marquesas, Independent Samoa, and American Samoa. No subspecies are currently recognized.

The status of populations in other areas is not well known, but the species is thought to be in decline throughout the oceanic Pacific, with at least one known extirpation (from the island of Futuna). In American Samoa, the population of the spotless crane is restricted to the summit of Tau Island.

The only known population in American Samoa co-occurs with Norway rats (*Rattus norvegicus*), which are known to prey on birds and their eggs and young. The spotless crane is particularly vulnerable because it is small, nests on the ground, and on Tau summit has no wetland refuge from predators. Finally, this single population, which existing survey data suggest is a small population, is at risk from stochastic occurrences such as typhoons and inbreeding depression. These threats affect the entire known population of this species in American Samoa, and are potentially lethal to individuals. The magnitude of threats facing the species is thus high, and these threats are more imminent than previously inferred because additional surveys indicate that this species occurs only as a single, small population in American Samoa.

Although this species may use a wide variety of habitats, wetland habitats may be necessary for self-sustaining populations of the crane to persist in the presence of predators. Wetland habitats are limited in American Samoa, and enforcement of their conservation under local and Federal law is not consistent. The listing priority number for the spotless crane is changed from 6 to 3 because surveys on Tau over the past several years have failed to yield evidence of this species in locations other than the summit, no observations of this species have been made during extensive, ongoing surveys of birds elsewhere in American Samoa, and the threat from rat predation is ongoing.

Friendly ground-dove (*Gallicolumba stairi stairi*)—The genus *Gallicolumba* is distributed throughout the Pacific and Southeast Asia. The genus is represented in the oceanic Pacific by six species. Three are endemic to Micronesian islands or archipelagos, two are endemic to island groups in

French Polynesia, and *G. stairi* is endemic to Samoa, Tonga, and Fiji. All six species have some level of threatened status on the International Union for Conservation of Nature and Natural Resources (IUCN) Red List. Some authors recognize two subspecies of the friendly ground-dove, one, slightly smaller, in the Samoan archipelago (*G. s. stairi*), and one in Tonga and Fiji (*G. s. vitiensis*), but morphological differences between the two are minimal. In American Samoa, the friendly ground-dove has been found on the islands of Ofu and Olosega (Manua Group).

Of the primary threats to the subspecies (predation by nonnative species, poaching and habitat loss), only predation by nonnative species is thought to be occurring now, and likely has been occurring for several decades. This predation may be an important impediment to increases in the population. Predation by introduced species has played a significant role in reducing and limiting populations of island birds, especially ground-nesters, in the Pacific and other locations worldwide. Nonnative predators known or thought to occur in the range of the friendly ground-dove in American Samoa are feral cats (*Felis catus*), Polynesian rats (*Rattus exulans*), black rats (*R. rattus*), and Norway rats (*R. norvegicus*). Consistent monitoring using a variety of methods over the last 5 years yielded few observations of this taxon in American Samoa. The total population size is poorly known, but is unlikely to number more than a few hundred pairs. The distribution of the friendly ground-dove is limited to steep, rocky slopes; areas that are not common in American Samoa. Threats to this subspecies have not changed over the past year, but to better reflect the fact that threats due to small population size and nonnative predators are imminent, we revised the listing priority number from a 6 to a 3.

Kauai creeper (*Oreomystis bairdi*)—The Kauai creeper, or akikiki, is a small Hawaiian honeycreeper found only on the island of Kauai, Hawaii, with no described subspecies. The species is known to be presently facing the primary threats of disease (avian malaria) and habitat degradation and loss. These threats have persisted over several decades, and are affecting a large proportion of the population.

The mosquito vector of avian malaria has been found throughout the range of elevations over which the creeper occurs, and malaria transmission occurs at least periodically over the species' entire range. The area of forest where

malaria is endemic is likely to increase with global climate change.

Efforts are underway to reduce habitat loss through control of invasive nonnative plants in some areas, but there is no weed control in most of the range of the Kauai creeper, and habitat loss is already occurring. Also, there are currently no efforts to control habitat damage by feral ungulates within the range of the Kauai creeper.

A large scale survey in 2000 showed that in the last 30 years the estimated population declined nearly 80 percent (from 6,832 \pm 966 to 1,472 \pm 680 birds), the range decreased approximately 60 percent (from 21,750 to 8,896 acres (8,800 to 3,600 hectares)), and the species has disappeared from much of the periphery of its range. The listing priority number for the Kauai creeper is changed from a 5 to a 2 because the threats facing the species are of a high magnitude and are imminent.

Yellow-billed cuckoo, Western Continental U.S. DPS (*Coccyzus americanus*)—While the cuckoo is still relatively common east of the crest of the Rocky Mountains, biologists estimate that more than 90 percent of the bird's riparian (streamside) habitat in the West has been lost or degraded. These modifications, and the resulting decline in the distribution and abundance of yellow-billed cuckoos throughout the western states, are believed to be due to conversion to agriculture; grazing; competition from nonnative plants, such as tamarisk; river management, including altered flow and sediment regime; and flood control practices, such as channelization and bank protection. Riparian habitat is continuing to be destroyed through land use conversion and grazing. Threats to the yellow-billed cuckoo have not changed over the past year, but to better reflect the fact that threats are imminent, we revised the listing priority number from a 6 to a 3 for this DPS.

Many-colored fruit-dove (*Ptilinopus perousii perousii*)—Two subspecies of the many-colored fruit-dove exist. One, *P. p. perousii*, is found in American Samoa, within the four main islands of Tutuila, Olosega, Ofu, and Tau, and Independent Samoa. Another subspecies, *P. p. mariae*, is found in Fiji and Tonga.

The primary threats to *P. p. perousii*, loss of the native banyan trees on which it depends, poaching, and predation by nonnative mammals, are thought to occur at levels insufficient to have a detrimental effect on the species' population in American Samoa. This is demonstrated by the fact that 5 years of extensive and intensive monitoring indicate an increase in the detected

relative abundance of many-colored fruit-doves in American Samoa. This trend may have been interrupted by Typhoon Heta in January of 2004, when damage to their primary food plants, the two species of native banyan trees, may have altered the doves' foraging to make them more vulnerable to the opportunistic poaching that typically takes place after typhoons (Craig *et al.* 1994).

At present, no disturbance other than typhoons is known to affect the abundance, distribution, or productivity of native banyans in American Samoa. Loss of native rainforest harboring these banyans and, presumably, the nesting habitat for the many-colored fruit-dove is not currently considered to be taking place at a rate that poses a severe or imminent risk to the many-colored fruit-dove, and poaching of this species is thought to be an extremely rare occurrence.

Predation by introduced species has played a significant role in limiting and extirpating populations of island birds in the Pacific and other locations worldwide (Atkinson 1977, 1985; Moors and Atkinson 1984). Nonnative predators known to occur in the range of the many-colored fruit-dove in American Samoa that could be a significant threat to this arboreal-nesting bird are black rats (*R. rattus*), Norway rats (*R. norvegicus*), and feral cats (*Felis catus*). However the continued existence of this species and the recently documented increase in its abundance, suggest that predation, while a potential threat, is not of a high-magnitude. The total population size of the many-colored fruit-dove is unknown, but may number up to a few hundred pairs.

In Independent Samoa, the many-colored fruit-dove may be more abundant than it is in American Samoa, but this difference likely reflects difference in island size—the main islands of Independent Samoa are both an order of magnitude larger than the islands of American Samoa—and the greater abundance in Independent Samoa of the two native figs, *Ficus prolixa* and *F. obliqua*, that are the preferred food of this fruit-dove. However, ongoing deforestation (potentially exacerbated by severe storms) and hunting are considered to threaten the many-colored fruit-dove in Independent Samoa, and this subspecies' status there is described as "Conservation Concern." We changed the listing priority number for the many-colored fruit-dove from 6 to 12 because the overall magnitude of threats is moderate to low and these threats are not imminent.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—Xantus's murrelet is a small seabird of the Alcidae family that occurs along the western coast of North America in the United States and Mexico. Xantus's murrelet populations in the United States and Mexico appear to have declined due to a wide variety of threats, with substantial declines evident at the largest known breeding population and extirpations on three of the Mexican islands. Data from the largest breeding population on Santa Barbara Island in the United States indicated a dramatic decline (as much as 70 percent from 1977 to the mid-1990s); data from other islands are scarce.

Although the decline in Xantus's murrelet populations appears to have been substantial, some of the largest threats are being addressed, and, to some degree, ameliorated in the United States. For example, although predation is a large contributor to the current low population numbers of the Xantus's murrelet, it does not pose as imminent a threat as it once did. Cats and rats have been removed from many of the islands where they once occurred. Anacapa Island implemented a rat eradication program in 2001 that seems to have been successful in removing that nonnative predator of the Xantus's murrelet. Rats were eradicated in 1994 from San Roque Island. Although the nonnative herbivores have been absent from Santa Barbara Island since the late 1950s, their presence facilitated the introduction of non-native grasses, which continue to exist and spread on that island. The conversion of native habitat to nonnative grassland that has occurred on Santa Barbara Island poses a threat to the population of Xantus's murrelet due to the fact that the island is only one square mile in size and holds the majority of the nesting population in California. Introduction of nonnative grasses has modified the habitat. Such habitat modification is thought to have increased the endemic deer mouse (*Peromyscus maniculatus elusus*) population, a native predator of Xantus's murrelet eggs.

The Service has been working with the State of California, National Park Service, and National Marine Fisheries Service to address the threats of light pollution and human disturbance. Many nocturnal birds are attracted to the lights of commercial fishing vessels and Xantus's murrelets and other seabirds become exhausted from continual attraction and fluttering near lights or collide with lighted vessels, the impact resulting in injury or death. Chicks have been documented to separate from their parents due to vessel lights, often

resulting in death as chicks are dependent on parents for survival. Additionally, squid boats operate in shallow waters close to Xantus's murrelet breeding colonies in the California Channel Islands. Increased predation on Xantus's murrelets by Western gulls (*Larus occidentalis*) and barn owls (*Tyto alba*) as a result of lighting, particularly from squid boats, near breeding colonies has been documented. To address the threat from light pollution, the California Department of Fish and Game implemented regulations to require shielding and limit wattage of lights used by boats conducting nighttime fishing activities. Although these regulations do not remove the negative effects of this activity, they likely have resulted in a reduction of the impacts. Although not likely responsible for the species' current low numbers, oil pollution may pose a potential threat to the survival of the Xantus's murrelet population.

Despite actions to address some of the threats to this species, a recent proposal by ChevronTexaco Corporation to build a liquid natural gas (LNG) facility 600 meters offshore Islas Los Coronados in Baja California, Mexico, poses a threat to the survival of the Xantus's murrelet. The Los Coronados islands support the largest known breeding population of Xantus's murrelets in the world. The construction and operation of the proposed LNG facility at Islas Los Coronados would increase levels of disturbance to Xantus's murrelets. Sources of disturbance include: (1) Bright lights at night from the facility and visiting tanker vessels; (2) noise from the facility; (3) noise from helicopters visiting the facility; (4) ingress and egress of tanker vessels; and (5) other vessels transporting personnel and supplies. These factors would have a serious impact on the islands' population of Xantus's murrelets, and, taken together, the cumulative disturbance caused by this proposed facility would have substantial negative consequences for the colony.

Additionally, there are potential impacts to the Xantus's murrelet prey base due to increased seawater chlorination resulting from this facility. The ocean waters around Islas Los Coronados are highly productive and very important foraging areas for breeding, migrant, and wintering seabirds such as the Xantus's murrelet. The loss of large numbers of prey could be detrimental to seabirds that depend on Islas Los Coronados for foraging at various times of year. Degraded water quality around Islas Los Coronados may also result from this project, such as

from the seawater chlorination process. A gas spill from the facility or pipeline could have substantial negative effects on the Xantus's murrelet. Due to the now imminent threats from the proposed LNG facility, we changed the listing priority number for this species from a 5 to a 2.

Amphibians

Black Warrior waterdog (*Necturus alabamensis*)—The Black Warrior waterdog inhabits streams above the Fall Line within the Black Warrior River Basin in Alabama. There is very little specific locality information available on the historical distribution of the Black Warrior waterdog, however, as limited attention was given to this species between its description in 1937 and the 1980's. There are a total of 11 known historical records from 4 Alabama counties. Two of these sites have now been inundated by impoundments. Extensive survey work was conducted in the 1990's to look for additional populations. Currently, the species is known from 14 sites in 5 counties.

Water quality degradation is the biggest threat to the continued existence of the Black Warrior waterdog. Most streams that have been surveyed for the waterdog showed evidence of pollution and many appeared biologically depauperate. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of waterdog habitat. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. An additional threat to the Black Warrior waterdog is the creation of large impoundments that have flooded thousands of acres of its habitat. These impoundments are likely marginal or unsuitable habitat for the salamander. Threats to the Black Warrior waterdog have not changed over the past year, but to better reflect the fact that threats from the pervasive water quality degradation in the Black Warrior Basin are imminent, we changed the listing priority number from a 5 to a 2 for this species.

Ozark hellbender (*Cryptobranchus alleganiensis bishopi*)—Since the species was elevated to candidate status in 2001 (66 FR 54808), the known threats have increased. In particular, recreational pressures on Ozark hellbender rivers have increased

substantially on an annual basis. The Missouri Department of Conservation reports that gigging popularity and pressure has increased, which presents a significant threat to hellbenders during the breeding season as they tend to move greater distances and congregate in small groups where they are an easy target for giggers. Canoe, kayak, and motor/jet boat traffic has increased in recent years on the Jacks Fork, Current, Eleven Point, and North Fork Rivers. The popularity of these float streams has grown to the point that the National Park Service is considering alternatives to reducing the number of boats that can be launched daily by concessionaires, but no change has been adopted and even if one is, floating will still occur. Horse trail rides are extremely popular along both the Jacks Fork and Current National Scenic Rivers. In 2003, the Missouri Department of Natural Resources added a 7-mile stretch of the Jacks Fork River to the 303(d) list of impaired waters for organic wastes (fecal coliform) immediately downstream from a commercial horse trail ride outfitter.

To date, nothing has been done to reduce or ameliorate ongoing threats to Ozark hellbenders. The Ozarks region continues to experience rapid urbanization, expansion of industrial agricultural practices such as concentrated animal feeding operations (chickens, turkeys, hogs, cattle), and logging. No laws are in place that preclude livestock from grazing in riparian corridors and resting in or along streams and rivers. Missouri is the second largest beef cattle producing state in the nation, with the majority of animal units produced in the Ozarks. Both Arkansas and Missouri are the leading States in poultry production. The fact that the majority of the Ozarks region in Missouri and Arkansas is comprised of karst topography (caves, springs, sinkholes, and losing streams) further complicates the containment and transport of potential contaminants.

In short, the abundance of treatment facilities and lack of adequate treatment facilities or practices for both human and livestock waste poses a significant and ever increasing threat to aquatic ecosystems. The decrease in Ozark hellbender range and population size and the shift in age structure are likely caused by a variety of historic and ongoing activities. The primary cause of these trends is habitat destruction and modification through impoundment, channelization, siltation, and water quality degradation from a variety of sources, including industrialization, agricultural runoff, mine waste, and timber harvest. Overutilization of

hellbenders for commerce and scientific purposes is also likely contributing to their decline. The regulations in place that could prevent these impacts, including the Clean Water Act and State laws, have been inadequate in preventing Ozark hellbender declines to this point. Finally, most of the remaining Ozark hellbender populations are small and isolated, making them vulnerable to individual catastrophic events and reducing the likelihood of recolonization after localized extinctions. Due to substantial increases in recreational pressures on Ozark hellbender rivers on an annual basis, we changed the listing priority number for this subspecies from a 6 to a 3.

Clams

Georgia pigtoe (*Pleurobema hanleyanum*)—The Georgia pigtoe was historically found in shallow runs and riffles in large creeks and rivers of the Coosa River drainage system in Alabama, Georgia, and Tennessee. The species is currently known to exist in localized portions of the upper Conasauga River in Murray and Whitfield Counties, Georgia, and in a short reach of the Coosa River below Terrapin Creek, Cherokee County, Alabama. The Georgia pigtoe is very rare, with only a few observations of living animals over the past 15 years. Impoundment and pollution are implicated in the decline and disappearance of the species. We changed the listing priority of the Georgia pigtoe from a 5 to a 2 due to rarity and continued lack of success into locating living animals.

Snails

Bonneville pondsnail (*Stagnicola bonnevillensis*)—The Bonneville pondsnail occupies four spring pools north of the Great Salt Lake in Box Elder County, Utah (Horse Spring B, Horse Spring B South, Pipe Spring, and Shotgun Spring). While the total number of individuals is unknown, the total occupied habitat is less than one hectare. Two previous threats to this species now appear to have been resolved. Leaks from petroleum pipelines in the area have occurred in 2000 and 2002; however, Chevron Pipeline (which has responsibility for operation and maintenance of the pipelines) has addressed potential threats from pipeline leaks with internal integrity inspections and alerts prior to leakage. Consequently, potential pipeline leaks are not a current threat. Intensive, unregulated grazing can degrade the habitat of aquatic species, including *Stagnicola bonnevillensis*, but the springs where this species occurs

have been fenced to restrict livestock use and this is not a current threat.

Current threats to this species include perchlorate and trichloroethelene (TCE) contamination from ATK Thiokol, Inc. (Thiokol). Until recently, Thiokol disposed of waste products such as perchlorate and TCE in an area 6.5 km (4 mi) upstream from the pondsnaïl's habitat, within the same hydrologic ground water gradient as the occupied snail habitat. Contaminated soils have been removed and the area capped to prevent further contamination. Groundwater sampling indicates that the 10 µg/l isoline of the TCE plume is 0.5 km (0.3 mi) north of Shotgun and Pipe Springs. The 100 µg/l isoline of the TCE plume is 2.4 km (1.5 mi) northwest of Shotgun Spring. The 1000 µg/l isoline of the TCE plume is 3.5 km (2.2 miles) northwest of Shotgun Spring. Levels of percholate measured in June 2004 range from 6.6 µg/liter in Fish Spring to 287 µg/liter in Pipe Spring. The acute toxicity of TCE and perchlorate to *Stagnicola bonnevillensis* is under investigation, but both substances are potentially lethal to most wildlife species. The current levels of TCE and perchlorate in the occupied springs and the approaching groundwater plume are of concern for the future of this species and its habitat. Thiokol is taking corrective action to identify and remediate groundwater contamination through a Corrective Action Plan (an updated groundwater model and risk assessments are to be completed in May 2005 under this plan). Bioassay studies are being initiated to determine the effect of these contaminants on the snail and its habitat.

Although the range of this species is highly restricted and the only known habitat is currently threatened by chemical contamination of the ground water, we consider the following actions that are addressing these threats to be significant enough to have reduced the magnitude of threats from high to moderate: discontinued disposal of wastes in an unlined impoundment, removal of contaminated soil, installation of a cap to prevent infiltration of water into soils beneath impoundment, monitoring of downgradient groundwater for contamination, implementation of a Corrective Action Plan to characterize and remediate groundwater contamination, implementation of a site management plan, and development of a groundwater model and risk assessment. Thus, we changed the listing priority from a 2 to an 8. Additionally, the Utah Division of Wildlife Resources is currently drafting

a Conservation Agreement and Strategy for this species.

Interrupted (Georgia) rocksnail (*Leptoxis foremani (downei)*)—Interrupted rocksnails historically occurred in shoals, riffles, and reefs of small to large rivers in the Coosa River Basin of Alabama and Georgia. Today, only a single surviving natural population is known from a short reach of the Coosawattee River, Georgia. During a 1999 census, 10–45 interrupted rocksnail snails per square meter were found in this reach. In 2004, a 6 man-hour search was required to find 20 individuals. Water quality is suspected as the cause of decline. A captive colony of approximately 200 snails was established at the Tennessee Aquarium Research Institute (TNARI) in 2000 for study and propagation. During the winter of 2003, the Alabama Department of Conservation and Natural Resources released about 3000 juvenile interrupted rocksnails from the TNARI colony into the Coosa River above Wetumpka, Elmore County, Alabama. The status of this reintroduction is currently unknown. We changed the listing priority number for the interrupted rocksnail from a 5 to a 2 due to the recent precipitous decline of the only known naturally surviving population in the Oostanaula River.

Newcomb's tree snail (*Newcombia cumingi*)—A tree-dwelling species, Newcomb's tree snail belongs to the snail family, Achatinellidae. The species is endemic to the island of Maui, where it is currently known from a single remaining population. This species is currently threatened by habitat loss and modification and by predation from nonnative predatorial snails. Because the threats are of a high magnitude and are now considered imminent because they are ongoing, we changed the listing priority number from a 5 to a 2.

Crustaceans

Anchialine pool shrimp (*Vetericaris chaceorum*)—*Vetericaris chaceorum* is an anchialine pool-inhabiting species of shrimp belonging to the family Procarididae. This species is endemic to the Hawaiian Islands and is currently known from one population on the island of Hawaii. The primary threats to this species are habitat loss and predation from nonnative fish species. We changed the listing priority number for this species from a 2 to a 1 as this species is in a monotypic genus. The threats remain imminent and of a high magnitude.

Flowering Plants

Bidens amplexans (Kookooalu)—This species is an erect perennial or facultatively annual herb found in mixed lowland dry shrubland/grassland on Oahu, Hawaii. This species is known from one population of 500 to 1,000 individuals in the Waianae Mountains. Threats to the species include nonnative plants that increase the fuel load and fire threat, and compete for habitat. We have changed the listing priority number for this species from 5 to 2 because the threats are ongoing, and therefore, imminent.

Bidens campylothea ssp. *pentamera* (Kookooalu)—This species is an erect, perennial herb found in *Cheirodendron-Metrosideros polymorpha* montane wet forest on Maui, Hawaii. This subspecies is known from 11 populations with a total of approximately 500 individuals, and is restricted to the island of Maui. Threats to the species include ungulates that eat this plant and degrade and destroy habitat, and by nonnative plants that compete for habitat. We have changed the listing priority number for this species from 6 to 3 because the threats are ongoing, and therefore, imminent.

Bidens micrantha ssp. *ctenophylla* (Kookooalu)—This species is an erect, perennial herb found in open mixed shrubland to dry *Metrosideros* forest on the island of Hawaii, Hawaii. This species is endemic to the island of Hawaii, where it is restricted to an area of less than 10 square miles (26 square kilometers). This species is known from four populations totaling approximately 3,000 individuals, the majority of which occur in only two populations. Threats to the species include land development and nonnative plants such as *Pennisetum setaceum* and *Leucana leucocephala*, which degrade habitat, possibly contributing to fire. We have changed the listing priority number for this species from 6 to 3 because the threats are ongoing, and therefore, imminent.

Brickellia mosieri (Florida brickell-bush)—This white-flowered, narrow-leaved herb in the aster family occurs in central and southern Miami-Dade County, Florida, from Southwest 120th Street to Florida City. It is found exclusively in pine rocklands, where it tends to occur in areas within open shrub canopy and exposed limestone with minimal organic litter. Approximately 99 percent of the former habitat has been converted to urban areas or farmland. Seventeen occurrences currently are confirmed in remnant blocks of habitat; thirteen are owned or managed by Miami-Dade

County and the others are privately owned. Of the known occurrences most contain a low density of plants; only two occurrences are believed to contain more than 1,000 individuals and the total population is estimated to be no more than 10,000 individuals, but more likely to be 5,000 to 7,000 individuals. There is little likelihood of finding significantly more populations. Fire suppression is one of the greatest threats to this species. Fire is required to maintain the pine rockland community but with fire suppression, hardwoods eventually increase and shade out understory species such as *Brickellia mosieri*. The other most significant threat is exotic plants. Throughout its range the species also is threatened by invasive exotic plants, and even if effective control methods are found for existing invasive exotic plants, additional invasive exotic plants are expected to emerge since areas near the managed pine rockland contain exotic species and can act as a seed source of exotics allowing them to continue to invade the pine rockland. However, 13 of the 17 sites are on conservation lands where control of invasive exotic species is being implemented, as well as controlled burns. Overall, the magnitude of threats to the Florida brickell-bush is moderate. The threats are also ongoing and therefore, imminent. Thus, we have revised the listing priority number from a 5 to an 8.

Calamagrostis expansa (no common name)—This species is a robust, short-rhizomatous perennial found in wet forest, open bogs, and bog margins on the islands of Maui and Hawaii, Hawaii. Historically rare, *Calamagrostis expansa* was restricted to wet forest and bogs on Maui. Currently, this species is known from 100 populations of 1 or 2 individuals each on Maui, and was recently discovered in 5 populations totaling approximately 300 individuals on the island of Hawaii. The species is currently threatened by pigs that degrade and destroy habitat and nonnative plants that outcompete and displace them. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Calamagrostis hillebrandii (no common name)—This species is a slender, short-rhizomatous perennial found in *Metrosideros-Machaerina* montane wet bog or *ohia-kuolohia-Oreobolus* (*Metrosideros-Rhynchospora-Oreobolus*) mixed bog on Maui, Hawaii. This species is known from two populations of about 500 individuals, restricted to the bogs of West Maui, although it was formerly found on the island of Molokai as well. This species

is currently threatened by pigs that degrade and destroy habitat and nonnative plants that outcompete and displace them. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Calochortus persistens (Siskiyou mariposa lily)—The Siskiyou mariposa lily is a narrow endemic that is restricted to two disjunct ridge tops in the Klamath-Siskiyou Range on the California-Oregon border. In California, this species is currently found at nine separate sites on approximately 10 hectares (ha) (24.7 acres (ac)) of Klamath National Forest and privately owned lands that stretch for 6 kilometers (km) (3.7 miles (mi)) along the Gunsight-Humbog Ridge. In 1998, five Siskiyou mariposa lily plants were discovered on Bald Mountain, west of Ashland, Jackson County, Oregon.

Major threats include competition and shading by native and nonnative species fostered by suppression of wild fire; increased fuel loading and subsequent risk of wild fire; fragmentation by roads, fire breaks, tree plantations, and radio-tower facilities; maintenance and construction around radio towers and telephone relay stations located on Gunsight Peak and Mahogany Point; and soil disturbance and exotic weed and grass species introduction as a result of heavy recreational use and construction of fire breaks. Dyer's woad (*Isatis tinctoria*), an invasive, nonnative plant that may prevent germination of Siskiyou mariposa lily seedlings, is now found throughout the California population, affecting 90 percent of the known lily habitat. Forest Service staff and the Klamath-Siskiyou Wildlands Center cite competition with dyer's woad as a significant and chronic threat to the survival of Siskiyou mariposa lily.

The combination of restricted range, extremely low numbers (five plants) in one of two disjunct populations, poor competitive ability, short seed dispersal distance, slow growth rates, low seed production, apparently poor survival rates in some years, and competition from exotic plants threaten the continued existence of this species. However, as a result of information gained during the 2003 field season, the listing priority number has been changed from 2 to 5. Our previous rating was based on the reported results of unpublished demographic research that showed an absence of reproduction, leading the Service to rate the immediacy of threats as imminent. However, during last season's extensive survey, Klamath National Forest staff observed juvenile plants across the California range of *C. persistens*. For

this reason, we have revised the immediacy of threats to nonimminent. Because none of the threats to *C. persistens* are anticipated to cause extinction in the immediate future and because the nonimminent threats are of a high magnitude, we assigned a listing priority number of 5 to this species.

Canavalia napaliensis (Awikiwiki)—This species is a perennial climber found in open dry sites and coastal strand, diverse lowland dryland/mesic forest to mixed mesophytic forest on Kauai, Hawaii. *Canavalia napaliensis* is known from three populations totaling several hundred individuals in a small section of the Na Pali coast. This species is currently threatened by goats that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace them. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Chamaesyce deltoidea ssp. *pinetorum* (Pineland sandmat)—This small, upright, round-leaved herb belonging to the spurge family is known only from the southern portion of the Miami Rock Ridge in Southern Miami-Dade County, Florida. This species occurs in tropical pine woods on limestone rock (rock pinelands). It is shade intolerant and requires periodic prescribed fires to reduce competition from woody vegetation. The total number of plants has been estimated to be fewer than 10,000. Plants occur on conservation lands at Everglades National Park and seven relatively small pinelands owned by Miami-Dade County, one private preserve, and a governmental non-conservation site. Additionally, fewer than 1,000 plants are estimated to occur at less than 10 privately owned unprotected sites. The most serious threats are lack of fire in small urban or near-urban preserves and invasive pest plants. Despite effective exotic pest plant management in Everglades National Park and on Miami-Dade County lands, the pest plant threats remain, and new problems, such as Old World climbing fern, are emerging. While there are inherent difficulties in maintaining small pinelands and the exotic pest plant threats are serious, overall, the threats are moderate in magnitude; the largest population occurs on Everglades National Park where invasive species are being actively controlled and fire is being used to maintain habitat for this species. The threats are imminent since they are ongoing. Therefore, we are revising the listing priority number for the pineland sandmat from 6 to 9.

Chamaesyce eleanoriae (Akoko)—This species is a small shrub found on

steep slopes and cliffs, in *Metrosideros-Diospyros* lowland mesic forest and *Eragrostis variabilis* coastal dry cliffs on Kauai, Hawaii. This species is known from 10 populations totaling less than 500 individuals. Described in 1996, it is found only in and around Kalalau Valley rim, along the Na Pali Coast on the island of Kauai. Although it was only discovered in 1992, a decline in numbers has already been observed. The species is threatened by goats and rats that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Chamaesyce remyi var. *kauaiensis* (Akoko)—This species is a shrub found in wind-swept shrubland and adjacent forest patches dominated by *Metrosideros* and *Syzygium* on Kauai, Hawaii. *Chamaesyce remyi* var. *kauaiensis* is known from four or five populations totaling 300 to 400 individuals. This variety is found only in the Wahiawa and Blue Hole areas on the island of Kauai. This species is threatened by goats and pigs that eat this plant and degrade and destroy habitat, by the two-spotted leafhopper that damages leaves and may spread plant viruses, and by nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 6 to 3 since the threats are ongoing, and therefore, imminent.

Chamaesyce remyi var. *remyi* (Akoko)—This species is a perennial shrub found in wet *Metrosideros polymorpha-Dicranopteris linearis* montane mesic forest on Kauai, Hawaii. *Chamaesyce remyi* var. *remyi* is known from at least 10 populations totaling 500 to 1,000 individuals. Hybrids of *C. remyi* and *C. sparsiflora* have been found near the margins of Wahiawa Bog, Kauai. This species is threatened by goats and pigs that eat this plant and degrade and destroy habitat, by the two-spotted leafhopper that causes leaf damage and may spread viruses, and by nonnative plants that outcompete and displace it. We have changed the listing priority number for this plant variety from 6 to 3 since the threats are ongoing, and therefore, imminent.

Charpentiera densiflora (Papala)—This species is a tree found in *Diosporus sandwicensis*-dominated lowland mesic forest, extending into diverse mesic forest on Kauai, Hawaii. *Charpentiera densiflora* is known from 10 populations totaling approximately 200 individuals, restricted to an area of less than 10 square miles (26 square

kilometers) in the Na Pali coast area on the island of Kauai. The threat to the species is feral goats that degrade and destroy habitat. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Chromolaena frustrata (Cape Sable thoroughwort)—This blue-flowered herb of the aster family presently occurs in Monroe County, Florida, at scattered locations in the Florida Keys and Everglades National Park near the Flamingo Visitors Center. Within the past 30 years, it was also observed slightly farther east in Everglades National Park in Miami-Dade County. In the Florida Keys (Monroe County), Cape Sable thoroughwort occupies rock barrens and edges of tropical hardwood hammocks. Populations of Cape Sable thoroughwort on public conservation lands are small. Everglades National Park has fewer than 150 plants (remote areas have not yet been surveyed); Boca Grande Key, Lignumvitae Key, Long Key, Upper Matecumbe Key have approximately 25, 81, 200, and 18 plants respectively. The species is also present at two privately owned sites (Long Key and Big Munson Island) in the Keys. Approximately 162 plants are on private land at Long Key. The only large population of Cape Sable thoroughwort (consisting of thousands of plants) is on a privately owned island near Big Pine Key. The abundance of Cape Sable thoroughwort here is probably due to Hurricane Georges in 1998, which opened the island's tree canopy. While the 1998 hurricane benefited one population, a more severe storm could have very different effects. The listing priority has been increased to reflect the high and imminent risk of extinction due to small population size, combined with the risk of loss of populations from exotic pest plants (especially Brazilian pepper) through changes in community structure and competition, hurricanes, and other disturbances (e.g. from trail construction). Therefore, we changed the listing priority number for the Cape Sable thoroughwort from a 5 to a 2.

Cyanea calycina (Haha)—This species is an unbranched shrub found in *Metrosideros-Dicranopteris* montane wet forest and wet gulches and streambanks on Oahu, Hawaii. This species is known from about 20 populations with a combined total of 200 or more individuals. Threats to the species include pigs and goats that degrade and destroy habitat, rats and slugs that directly prey upon it, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5

to 2 since the threats are ongoing, and therefore, imminent.

Cyanea kunthiana (Haha)—This species is a shrub found in closed *Metrosideros polymorpha* montane wet forest on Maui, Hawaii. The historic range of *Cyanea kunthiana* was wet forest on the island of Maui. While there are no historic records of numbers of populations or individuals, qualitative accounts indicate that the species was not uncommon. Currently, this species is declining throughout its range and is known from approximately 20 populations with a combined total of several hundred individuals. Threats to the species include pigs, rats, and slugs that eat this plant and degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Cyanea lanceolata (Haha)—This species is a shrub found in *Acacia koa-Metrosideros polymorpha* lowland mesic forest on Oahu, Hawaii. This species is known from 20 populations with a combined total of less than 300 individuals. Threats to the species include pigs, rats, and slugs that prey upon, degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Cyanea tritomantha (Aku)—This species is a palm-like tree found in closed *Metrosideros-Cibotium* montane wet forest on the island of Hawaii, Hawaii. This species is known from four to five populations with a total of 100 to 500 individuals in Olaa and Kau on the island of Hawaii. Threats to the species include pigs, rats, and slugs that eat this plant and degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Cyrtandra kaulantha (Haiwale)—This species is a shrub found in moist wooded gulches in dense shade on Oahu, Hawaii. This species is known from seven populations with a total of 37 individuals along the Waiahole Ditch Trail on the island of Oahu. Threats to the species include pigs and slugs that eat this plant and degrade and destroy habitat. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Cyrtandra oenobarba (Haiwale)—This species is a low, decumbent, fleshy, subshrub found in *Metrosideros*

polymorpha-Dicranopteris linearis lowland wet forest on Kauai, Hawaii. The historic range of this species was throughout the island of Kauai. While there are no historic records of numbers of populations or individuals, qualitative accounts indicate that the species was relatively widespread and abundant. Recent surveys show that the species is now limited to 10 or more populations with a combined total of 200 to 500 individuals in only three small areas on the island of Kauai. Threats to the species include pigs that eat this plant and degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Dalea carthagenensis var. *floridana* (Florida prairie clover)—This shrubby pea is restricted to south Florida, where it is found in edges of rockland hammock and pine rockland, coastal upland, and marl prairie. Fire is likely very important for this species since Florida prairie clover probably does not tolerate shading by hardwoods in the absence of periodic fires. Two colonies occur in the Big Cypress National Preserve (Collier and Monroe Counties), two colonies occur at the Deering Estate at Cutler (managed by Miami-Dade County), and one colony exists at the R. Hardy Matheson Preserve (Miami-Dade County). Although this species potentially might be rediscovered at still existing Miami area sites where it was once collected (such as Crandon Park on Key Biscayne, the Castellow Hammock Environmental Education Center, and the edge of Everglades National Park), species experts believe this is unlikely. The estimated total population of Florida prairie clover is 200 to 300 plants. Even if all the plants were in a single locality, they probably would not constitute a viable population. The State has designated the species as endangered, but this listing provides little or no habitat protection beyond disclosure of impacts. Threats to this plant developed over the course of the twentieth century as most of its geographic range in Miami-Dade County became urbanized, leaving only small remnants of pine rocklands. Fire suppression and invasive exotic plants are the greatest threats to this species. In the absence of fire, hardwoods eventually shade out understory species like *Dalea carthagenensis* var. *floridana*. Conducting prescribed fires in urban areas where the small sites exist is difficult but there has been some success at the Charles Deering Estate and R. Hardy Matheson Preserve. Exotic

(i.e., nonnative) plants are widespread and difficult to control. There have been some efforts to remove the exotic plants at the smaller sites, but the methods used are not feasible at the large Big Cypress National Preserve. The small remaining populations of the species also are extremely vulnerable to the effects of hurricanes. Overall, our review of the status of this species shows that the magnitude of threats is moderate and threats are ongoing, and therefore, imminent. Therefore, we have changed the listing priority number for this plant variety from a 6 to a 9.

Dubautia imbricata ssp. *imbricata* (Naenae)—This species is a shrub found in wet forest and bogs on Kauai, Hawaii. This subspecies is known from three populations totaling 1,000 or more individuals in the Wahiawa Mountains. Threats to the species include pigs that degrade and destroy habitat and nonnative plants that outcompete and displace it. We have changed the listing priority number for this subspecies from 6 to 3 since the threats are ongoing, and therefore, imminent.

Dubautia waialealae (Naenae)—This species is a shrub found in bogs and diverse mesic to wet forest on the Kauai, Hawaii. This species is known from one population totaling fewer than 800 individuals near the summit of Waialeale and one individual at the opposite end of the Alakai Plateau. Threats to the species include pigs that degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Festuca hawaiiensis (no common name)—This species is a caespitose (grows in dense clumps) annual found in dry forest on the islands of Hawaii and Maui, Hawaii. This species is known from more than 20 populations totaling approximately 1,000 individuals in and around the Pohakuloa Training Area on the island of Hawaii. Historically, this species was also found on Hualalai and Puu Huluhulu on Hawaii and possibly Ulupalakua on Maui, but it no longer occurs at these sites. The species is threatened by pigs, goats, and sheep that eat this plant and degrade, and destroy habitat, by nonnative plants that outcompete and displace it, and by fire from military training. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Gardenia remyi (Nanu)—This species is a tree found in mesic to wet forest on the islands of Kauai, Molokai, Maui, and Hawaii, Hawaii. *Gardenia remyi* is

known from several populations totaling a few hundred individuals throughout its range. The species is threatened by pigs and goats that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Geranium hanaense (Nohoanu)—This species is a decumbent (growing along the ground) shrub found in bogs on Maui, Hawaii. First described in 1988, *Geranium hanaense* was known from only two adjacent montane bogs on the northeast outer rift of Haleakala, East Maui. At that time the species was represented by 500 to 700 individuals. By 1996, the species population had significantly declined according to State biologists. Threats to the species include pigs that degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Hazardia orcuttii (Orcutt's Hazardia)—*Hazardia orcuttii* is a shrubby species in the Asteraceae (sunflower family). Although once described as fairly common in open habitats along coastal plains from Colonet to Tijuana in Baja California, Mexico, only one occurrence has been confirmed in Mexico since 1975. There is only one known extant native occurrence of this species in the United States; it is in the Manchester Conservation Area (MCA), managed by the Center for Natural Lands Management in the City of Encinitas. Apparent threats to the species include direct impacts from unauthorized access and use of the MCA. Impacts include pedestrian trespass, creation, and use of bicycle trails, and use of the area for unauthorized fire suppression methods training. Introduced invasive exotic plants may also pose a significant threat to the species. Monitoring has not recorded seedling recruitment at the site. This species has a narrow geographical range in the United States, but the site is managed. Because this species is State-listed and occurs in a managed, protected area, the threats are now nonimminent, but remain high in magnitude. Therefore, we changed the listing priority number for this species from a 2 to a 5.

Hedyotis fluvialis (Kamapuaa)—This species is a scandent shrub found in mesic to wet forest on Oahu and Kauai, Hawaii. This species is known from six populations totaling 500 to 1,000 individuals throughout its range. This species is threatened by pigs that

degrade and destroy habitat, and by nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Indigofera mucronata var. *keyensis* (Florida indigo)—This small, perennial pea is found at edges of tropical rockland hammock (forest), coastal berm, and rock barren communities in the upper Florida Keys (Monroe County, Florida). Florida Keys indigo is currently known only from Crawl Key (private), Key Largo (John Pennekamp Coral Reef State Park), Long Key State Park, Long Point Key (private), Plantation Key (private), and Windley Key Fossil Coral Reef State Geological Park. A population has been seen at Snake Creek Hammocks, Florida Keys Wildlife and Environmental Area, managed by the Florida Fish and Wildlife Conservation Commission. This species appears to have been extirpated from the Lower and Upper Matecumbe Keys. Perhaps no more than 1,000 individuals exist. The coastal rock barrens at two sites are being invaded by native and exotic hardwoods, and the exotic Brazilian pepper (*Schinus terebinthifolius*) is a special concern as the pepper is very competitive. For example, on Long Point Key, encroaching Brazilian pepper threatens to close over the opening where a small population of Florida indigo occurs. It is unlikely this population will survive another decade under current conditions. The overall status of this plant appears to be stable on public conservation lands in the Keys due to land acquisition by the State, monitoring by the Florida Park Service, and effective control of exotic pest plants in some areas. Because the threats to this plant are moderate and are ongoing, and therefore, imminent, we have changed the listing priority number from 6 to 9.

Keysseria erici (no common name)—This species is a short, rhizomatous perennial herb found in montane bogs on Kauai, Hawaii. *Keysseria erici* is known from several populations in bogs within the Alakai swamp region of Kauai, totaling approximately 1,000 individuals. While the species has always been restricted to the bogs of the Alakai, it may have occurred in more bogs in the area in the past. Threats to the species include pigs that degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Keysseria helenae (no common name)—This species is a rhizomatous perennial herb found in montane bogs on Kauai, Hawaii. *Keysseria helenae* is known from three or four populations in bogs within the Alakai swamp region of Kauai, totaling approximately 300 individuals. While the species has always been restricted to the bogs of the Alakai, it may have occurred in more bogs in the area in the past. Threats to the species include pigs that degrade and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Korthalsella degeneri (Hulumoa)—This species is a parasitic subshrub found on two species of native trees, *Sapindus oahuensis* and *Nestigis sandwicensis*, only in diverse mesic forests on Oahu, Hawaii. Recent surveys indicate that the species is known only from one population of 1,000 individuals in Makua Valley. Threats to the species include goats that eat this plant and degrade and destroy habitat, by nonnative plants that outcompete and displace it, and by fire. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Labordia helleri (Kamakahala)—This species is a shrub found in diverse mesic forest and mesic valleys on Kauai, Hawaii. This species is known from eight or more populations totaling 500 individuals from Makaha to Honopu. This species is threatened by goats and deer that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Labordia pumila (Kamakahala)—This species is a sparingly branched shrub found in hummocks in bogs and in bog margins on Kauai, Hawaii. This species is known from three populations totaling 500 to 700 individuals in the Alakai and Waialeale areas. This species is threatened by pigs that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Lysimachia daphnoides (Lehua makanoe)—This species is a small shrub found in bogs on Kauai, Hawaii. This species is known from nine populations totaling 180 to 300 individuals in the Alakai area. Threats to the species include pigs and hikers that degrade

and destroy habitat, and nonnative plants that outcompete and displace it. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Melicope christophersenii (Alani)—This species is a long-lived perennial shrub or tree found in wet forest on Oahu, Hawaii. *Melicope christophersenii* was historically known from the southern Waianae Mountains on the island of Oahu. Currently, this species is known from several populations totaling less than 300 individuals. This species is threatened by feral pigs and goats that eat this plant and degrade habitat, competition from nonnative plants, and predation by the black twig borer. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Melicope puberula (Alani)—This species is a shrub or small tree found in mesic and wet forest on Kauai, Hawaii. This species is known from 1,000 individuals in the Kalalau area to Wainiha Pali on the island of Kauai. Threats to the species include feral pigs and goats, nonnative plants, the black twig borer, and naturally occurring events. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Myrsine fosbergii (Kolea)—This species is a branched shrub or small tree found in cloudswep ridges and wet forest on Kauai and Oahu, Hawaii. This species is known from at least five populations totaling 150 to 175 individuals from Kauai and the southeastern end of Castle Trail on Oahu. This species is threatened by feral pigs and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Myrsine vaccinioides (Kolea)—This species is a small branched shrub found in shrubby bogs on Maui, Hawaii. This species is found scattered throughout the bogs of west Maui, totaling approximately 500 individuals, but regeneration is not occurring. This species is found in the Puu Kukui area of West Maui. Threats to the species include feral pigs and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Nothocestrum latifolium (Aiea)—This species is a small tree found in dry to mesic forest and diverse mesic forests on Kauai, Oahu, Maui, Molokai and Lanai, Hawaii. *Nothocestrum latifolium* is known from approximately a dozen

populations totaling less than 300 individuals. While the species has not been extirpated from any island, its range on each island has decreased dramatically. Threats to the species include feral pigs, goats and cattle, nonnative plants, and the loss of pollinators. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Penstemon debilis (Parachute beardtongue)—*Penstemon debilis* is endemic to oil shale outcrops on the Roan Plateau escarpment in Garfield County, Colorado. The total estimated number of plants is 450 to 750 individuals. Approximately 90 percent of the plants are on private land owned by Occidental Petroleum; the remaining 10 percent are on Bureau of Land Management land that is proposed to be open to leasing under a new Resource Management Plan in 2005. Pressure to develop energy reserves in this area is intense. Threats also include habitat destruction caused by road and communication tower maintenance and recreational use. A listing priority number change from 5 to 2 is based on a dramatic increase in the intensity of energy exploration along the Roan Plateau escarpment, making the threats to the species imminent.

Phacelia submutica (DeBeque phacelia)—*Phacelia submutica* is an ephemeral annual flowering plant and is endemic to clay soils derived from the Atwell Gulch and Shire members of the Wasatch Formation in Mesa and Garfield Counties, Colorado. There are about 40 populations; all are smaller than 5 acres. The numbers of plants vary from none to thousands each year, depending on precipitation. The habitat coincides with high quality oil and gas reserves of the Piceance Basin, mostly on Federal lands. The primary threats to this species are gas field development and associated construction and transportation activities, as well as increased access to all-terrain vehicles. Substantial surface disturbance alters the unique soil structure and destroys seed banks that are crucial to the survival of this species. We changed the listing priority number from an 11 to an 8 primarily in response to a dramatic increase in the intensity of energy exploration and development on the habitat, which make the low to moderate threats imminent.

Phyllostegia floribunda (no common name)—This species is an erect subshrub found in mesic to wet forest on the island of Hawaii, Hawaii. This species is known from 4 populations with a combined total of between 100 to 500 individuals in Laupahoehoe Natural

Area Reserve and Hawaii Volcanoes National Park. Threats to the species include feral pigs, and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Pittosporum napaliense (Hoawa)—This species is a small tree found in *Pandanus* forest and mesic valleys on Kauai, Hawaii. This species is known from about six populations, with a combined total of several hundred individuals on the eastern portion of the Na Pali coast. Threats to the species include feral pigs and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Platydesma cornuta var. *cornuta* (no common name)—This species is an erect palmoid shrub found in mesic forest on Oahu, Hawaii. This variety is known from three to four populations, with a combined total of approximately 100 individuals in the Koolau Mountains on the island of Oahu. Limited monitoring has shown that this population is declining. Threats to the species include feral pigs and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Platydesma cornuta var. *decurrens* (no common name)—This species is an erect palmoid shrub found in mesic forest on Oahu, Hawaii. This variety is known from a few populations, with a combined total of a few hundred individuals in the Waianae Mountains. Threats to the species include feral pigs, goats, and nonnative plants. We have changed the listing priority number for this variety from 6 to 3 since the threats are ongoing, and therefore, imminent.

Platydesma rostrata (Pilo kea lau lii)—This species is erect palmoid shrub found in diverse mesic forest and valleys on Kauai, Hawaii. This species is known from about 20 populations with a combined total of several hundred individuals in Kokee and Kuia. This species is threatened by feral goats and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Pleomele fernaldii (Hala pepe)—This species is a tree found in dry forest habitat on Lanai, Hawaii, which has become dramatically reduced due to agriculture and habitat degradation. Three populations of this species are currently found on the island of Lanai in the few remnant dry forests on the leeward side of the island, with a combined total of 200 individuals.

Threats to the species include axis deer and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Pleomele forbesii (Hala pepe)—This species is a tree found in diverse mesic and dry forests on Oahu, Hawaii. Although previously thought to be more common, this species is currently known from 16 populations that have a combined total of 500 individuals. This species is threatened by feral pigs and goats, nonnative plants, fire, and rats. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Pritchardia hardyi (Loulu)—This species is a medium-sized palm tree found in open wet forest on Kauai, Hawaii. This species is known from three populations with a combined total of 300 individuals in the Power Line Road area. This species is threatened by feral pigs, rats, vandalism/collection, and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Pseudognaphalium (=Gnaphalium) *sandwicensium* var. *molokaiense* (Enaena)—This species is a perennial herb found in strand vegetation in dry consolidated dunes on Molokai, Hawaii. This variety is known from two populations, one totaling a few hundred individuals in the Moomomi area and one population of 25 individuals on west Maui at Puu Kahulianapa. Threats to the species include predation by feral deer, competition with nonnative plants, collection by lei makers, and destruction by off road vehicles. We have changed the listing priority number for this variety from 6 to 3 since the threats are ongoing, and therefore, imminent.

Pteralyxia macrocarpa (Kaulu)—This species is a tree found in valleys and slopes in diverse mesic forest on Oahu, Hawaii. This species is known from 20 populations with a combined total of less than 500 individuals. Threats to the species include feral pigs, rats, the two-spotted leafhopper, and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Ranunculus hawaiiensis (Makou)—This species is an erect or ascending perennial herb found in mesic to wet forest, dominated by *Metrosideros polymorpha* (ohia) and *Acacia koa* (koa) with scree substrate on Maui and the island of Hawaii, Hawaii. Its range on these two islands has declined. Populations formerly within Haleakala

National Park have been extirpated. It is known from fewer than 300 individuals in five populations. However, the majority of these individuals are seedlings, less than 1 inch (2.5 centimeters) tall. Species experts expect the rate of survival to be very low due to trampling by feral pigs, goats, cattle, and sheep. Other threats to the species include competition from nonnative plants, and damage from slugs. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Sicyos macrophyllus (Anunu)—This species is a perennial vine found in wet *Metrosideros polymorpha* (ohia) forest and subalpine *Sophora chrysophylla-Myoporum sandwicense* (mamane/naio) forest on the island of Hawaii, Hawaii. This species is known from several populations with a combined total of a few hundred individuals in the Kohala and Mauna Kea areas. This species is threatened by feral pigs, sheep and nonnative plants. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Solanum nelsonii (Popolo)—This species is a sprawling or trailing shrub found in coral rubble or sand in coastal sites on the islands of Hawaii, Molokai, Maui, Niihau, Nihoa, Pearl, and Hermes, Hawaii. This species is known from ten populations with a combined total of fewer than 300 individuals and is declining rapidly on all islands, including the Remote Islands National Wildlife Refuge. In the past, this species was also found on the islands of Oahu, Kauai, Midway, and Laysan, but is believed to be extirpated from these locations, due primarily to coastal development and competition with nonnative plant species. This species is threatened by nonnative plants, development, off road vehicles, and trampling. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Ferns and Allies

Christella boydiae (no common name)—This species is a small to medium sized fern found in mesic to wet forest along streambanks on Oahu and Maui, Hawaii. Historically, this species was also found on the island of Hawaii; however, the species has been extirpated from that location. This species is known from three populations with a combined total of 362 to 412 individuals. The three populations are found in Kipahulu Valley and Waihoi Valley of Maui and the Koolau Mountains of Oahu. Current populations survive only at the extreme

upper elevations of streambanks. This species is threatened by feral ungulates, nonnative plants, stream diversion, and erosion. We have changed the listing priority number for this species from 5 to 2 since the threats are ongoing, and therefore, imminent.

Microlepidia strigosa var. *mauiensis* (Palapalai)—This fern is found in mesic to wet forests. The species was historically found on the islands of Maui and Hawaii, Hawaii, but is currently found only on the island of Maui, where it is known from three populations with a combined total of 100 to 200 individuals. This species is threatened by feral pigs that eat this plant and degrade and/or destroy habitat, by nonnative plants that compete for light and nutrients, and reduce this species' vigor; and by stochastic extinction due to naturally occurring events. We have changed the listing priority number for this species from 2 to 3 because this entity is now recognized as a variety of another species. The threats to this variety remain imminent and of a high magnitude.

Other Taxonomic Changes in Candidates

Flowering Plants

Keysseria erici (C.N. Forbes) Cabrera—This species has no common name and is in the Asteraceae (Sunflower family). *Keysseria erici* was originally described as *Lagenophora erici* by C.N. Forbes in 1918. The currently recognized Latin name, *Keysseria erici*, was published by Cabrera in 1967. This name is accepted in the 2003 supplement to the *Manual of the Flowering Plants of Hawaii* (Wagner and Herbst 2003). Thus, with this current CNOR and accompanying species assessment form, we recognize the candidate entity as *Keysseria erici* (rather than the name we previously used, *Lagenophora erici*). Also, see above in "Summary of Listing Priority Changes in Candidates."

Keysseria helenae (C.N. Forbes & Lydgate) Cabrera—This species has no common name and is in the Asteraceae (Sunflower family). *Keysseria helenae* was originally described as *Lagenophora helenae* by C.N. Forbes and J. Lydgate in 1918, and in previous CNORs we showed *L. helenae* as a candidate. The currently recognized Latin name, *Keysseria helenae*, was published by Cabrera. This name is accepted in the 2003 supplement to the *Manual of the Flowering Plants of Hawaii* (Wagner and Herbst 2003). Thus, with this current CNOR and accompanying species assessment form, we recognize the candidate entity as

Keysseria helenae. Also, see above in "Summary of Listing Priority Changes in Candidates."

Ferns and Allies

Christella boydiae (D.C. Eaton) Holttum—This species has no common name and is in the family Thelypteridaceae. *Christella boydiae* was originally described as *Aspidium boydiae* by D.C. Eaton in 1897, and in previous CNORs we showed *A. boydiae* as a candidate. The currently recognized Latin name, *Christella boydiae*, was published by R.E. Holttum in 1966. This name is accepted by a recent treatment of the fern flora of Hawaii (Palmer 2003). Thus, with this current CNOR and accompanying species assessment form, we are recognizing the candidate entity as *Christella boydiae*. Also, see above in "Summary of Listing Priority Changes in Candidates."

Huperzia stemmermanniae (A.C. Medeiros & W.H. Wagner) Kartesz—This species has no common name but is a type of hanging firmoss in the Lycopodiaceae (Club-moss family). *Huperzia stemmermanniae* was originally described as *Phlegmariurus stemmermanniae* by A.C. Medeiros and W.H. Wagner (Medeiros *et al.* 1996) based on specimens collected on Haleakala, Maui, Hawaii, by Medeiros and Chimera in 1995. The currently recognized Latin name, *Huperzia stemmermanniae*, was published in 1999 (Kartez 1999). This name is accepted by a recent treatment of the fern flora of Hawaii (Palmer 2003). Thus, with this current CNOR and accompanying species assessment form, we are recognizing the candidate entity as *Huperzia stemmermanniae* (rather than the name we previously used, *Phlegmariurus stemmermanniae*). *Huperzia stemmermanniae* is found in mesic *Metrosideros polymorpha* (ohia)/*Acacia koa* (koa) forests on the islands of Maui and Hawaii, Hawaii. This species was historically known only from east Maui. Additional populations are found in Laupahoehoe on the island of Hawaii. Only four populations are known, totaling less than 20 individuals on Hawaii and Maui. This species is threatened by feral pigs, goats, and cattle, which eat this plant and degrade and/or destroy habitat; fire that also destroys habitat and plants; and, nonnative plants that outcompete it for light and nutrients. Because the threats are of a high magnitude and are imminent, we are continuing to assign this species a listing priority number of 2.

Microlepidia strigosa var. *mauiensis* (palapalai) is in the family Dennstaedtiaceae. *Microlepidia strigosa*

var. *mauiensis* was originally described as *Microlepidia mauiensis* by W.H. Wagner and in previous CNORs we showed *M. mauiensis* as a candidate. The currently recognized Latin name, *Microlepidia strigosa* var. *mauiensis*, was published by D. Palmer in 2002. This name is accepted in his recent treatment of the fern flora of Hawaii Palmer (2003). Also, see above in “Summary of Listing Priority Changes in Candidates.”

Candidate Removals

Clams

Alabama clubshell (*Pleurobema troshelianum*) and painted clubshell (*Pleurobema chattanoogaense*)—Based on recent genetic and morphological studies by Williams *et al.* and Campbell (see the species assessment forms for references and details), these two taxa are no longer considered valid, and do not meet the Act’s definition of a species. Therefore, we are removing both species from candidate status.

Insects

Holsinger’s Cave beetle (*Pseudamphthalmus holsingeri*)—Holsinger’s cave beetle is a cave-dependent predatory ground beetle found in a single cave, Young-Fugate Cave, located in Lee County, Virginia. Through conservation efforts, two previous major threats have been eliminated: (1) A highway widening project proposed to be constructed near the cave has been modified to avoid impacts to the cave, and, (2) a leaking underground fuel tank from a gas station located over the cave has been removed. Additionally, the cave entrance is located on private land where the landowners strictly prohibit entry into the cave. Although water entering Young-Fugate cave is somewhat affected by sources of non-point source pollution, results of monitoring the cave beetle population have shown no evidence that current surrounding land use has negatively impacted the cave beetle. Thus, threats to this species have been eliminated and the species no longer meets the definition of a candidate species.

Crustaceans

Camp Shelby burrowing crayfish (*Fallicambarus gordonii*)—The Camp Shelby burrowing crayfish (CSBC) is found in pitcher plant wetlands of southern Mississippi. CSBC has a small, naturally limited range in a localized portion of the Leaf River watershed in central Perry County, Mississippi, within the Desoto National Forest. All of this area is currently under lease to the Mississippi Army National Guard’s

Camp Shelby for troop and tank training grounds. A Candidate Conservation Agreement (CCA) was developed and is being implemented by the Mississippi Army National Guard, U.S. Forest Service, Mississippi Department of Wildlife, Fisheries and Parks, and the Service. This CCA addresses all threats known to the species (silviculture, troop and tank maneuvers, and ATV use) and implements an aggressive habitat management and monitoring program. This signed CCA has removed threats to the CSBC and its habitat to the point that the species no longer meets the criteria for candidate status. We are removing this species from the candidate list primarily as a result of the conservation efforts outlined in the CCA.

Petition Findings for Candidate Species

The Act provides two mechanisms for considering species for listing. One method allows the Secretary, on her own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. The second method for listing a species provides a mechanism for the public to petition us to add a species to the Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing may be warranted (a “90-day finding”). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make and publish one of three possible findings within 12 months of the receipt of the petition (a “12-month finding”):

1. The petitioned action is not warranted;
 2. The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action. Once we publish a proposed rule for a species, section 4(b)(5) and 4(b)(6) govern further procedures regardless of whether we issued the proposal in response to a petition.); or
 3. The petitioned action is warranted but that (a) the immediate proposal of a regulation and final promulgation of regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the lists of endangered or threatened species. (We refer to this as a “warranted but precluded” finding.)
- Section 4(b)(3)(C) of the Act requires that when we make a warranted but

precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. Thus, we are required to publish new 12-month findings on these “resubmitted” petitions on an annual basis.

On December 5, 1996, we made a final decision to redefine “candidate species” to mean those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481, December 6, 1996). Therefore, the standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12-month finding to the candidate list.

This publication also provides notice of substantial 90-day findings and the warranted-but-precluded 12-month findings pursuant to section 4(b)(3) for candidate species listed on Table 1 that we identified on our own initiative, and that subsequently have been the subject of a petition to list. Even though all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month finding, we reviewed the status of the newly petitioned candidate species and through this CNOR are publishing specific section 4(b)(3) findings (*i.e.*, substantial 90-day and warranted-but-precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition.

Pursuant to section 4(b)(3)(C)(i) of the Act, once a petition is filed regarding a candidate species, we must make a 12-month petition finding in compliance with section 4(b)(3)(B) of the Act at least once a year, until we publish a proposal to list the species or make a final not-warranted finding. We make this annual finding for petitioned candidate species through the CNOR.

Section 4(b)(3)(C)(iii) of the Act requires us to “implement a system to monitor effectively the status of all species” for which we have made a warranted-but-precluded 12-month finding, and to “make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species.” The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species

by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare annually a species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate, whether it was identified through our own initiative or through the petition process, we will make prompt use of the emergency listing authority under section 4(b)(7). We have been reviewing and will continue to review, at least annually, the status of every candidate whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms also constitute the Service's annual finding on the status of petitioned species pursuant to section 4(b)(3)(C)(i).

On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 CNOR (64 FR 57534, October 25, 1999) did not demonstrate that we fulfilled the second component of the warranted-but-precluded 12-month petition findings for the Gila chub and Chiracahua leopard frog (*Center for Biological Diversity v. Norton*, 254 F.3d 833 (9th Cir. 2001)). The court found that the one-line designation in the table of candidates in the 1999 CNOR, with no further explanation, did not satisfy section 4(b)(3)(B)(iii)'s requirement that the Service publish a finding "together with a description and evaluation of the reasons and data on which the finding is based." The court suggested that this one-line statement of candidate status also precluded meaningful judicial review.

On June 21, 2004, the United States District Court for Oregon agreed that we can use the CNOR as a vehicle for making petition findings and that our reasoning for why listing is precluded does not need to be based on an assessment at a regional level (as opposed to a national level) (*Center for Biological Diversity v. Norton* Civ. No. 03-1111-AA (D. Or.)). However, this court found that our discussion on why listing the candidate species were precluded by other actions lacked specificity; in the list of species that were the subject of listing actions that precluded us from proposing to list candidate species, we did not state the specific action at issue for each species in the list and we did not indicate which actions were court-ordered.

On June 22, 2004, in a similar case, the United States District Court for the

Eastern District of California also concluded that our determination of preclusion may appropriately be based on a national analysis (*Center for Biological Diversity v. Norton* No. CV S-03-1758 GEB/DAD (E.D. Cal.)). This court also found that the Act's imperative that listing decisions be based solely on science applies only to the determination about whether listing is warranted, not the question of when listing is precluded.

On March 24, 2005, the United States District Court for the District of Columbia held that we may not consider critical habitat activities in justifying our inability to list candidate species, requiring that we justify both our preclusion findings and our demonstration of expeditious progress by reference to listing proceedings for unlisted species (*California Native Plant Society v. Norton*, Civ. No. 03-1540 (JR) (D.D.C.)). The court further found that we must adequately itemize priority listings, explain why certain species are of high priority, and explain why actions on these high priority species preclude listing species of lower priority. The court approved our reliance on national rather than regional priorities and workload in establishing preclusion and approved our basic explanation that listing candidate species may be precluded by statutorily mandated deadlines, court-ordered actions, higher priority listing activities, and a limited budget.

We have drafted this CNOR to address the concerns of these courts. We include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis (see below). Regional priorities can also be discerned from Table 1, which includes the lead region and the listing priority number for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species and we explain the priority system and why the work we have accomplished does preclude action on candidate species.

Pursuant to section 4(b)(3)(C)(ii) and the Administrative Procedure Act (5 U.S.C. 206), any party with standing may challenge the merits of any not-warranted or warranted-but-precluded petition finding incorporated in this CNOR. The analysis included herein, together with the administrative record for the decision at issue (particularly the supporting species assessment form),

will provide an adequate basis for a court to review the petition finding.

Nothing in this document or any of our policies should be construed as in any way modifying the Act's requirement that we make a resubmitted 12-month petition finding for each petitioned candidate within one year of the date of publication of this CNOR. If we fail to make any such finding on a timely basis, whether through publication of a new CNOR or some other form of notice, any party with standing may seek judicial review.

In this CNOR, we are addressing the concerns of the courts by adding more specific information into our discussion on preclusion (see below). In preparing this CNOR, we reviewed the current status of and threats to the 262 candidates and 5 listed species for which we have received a petition and for which we have found listing or reclassification from threatened to endangered to be warranted-but-precluded. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species. This is the first 12-month petition finding for those candidate species that were petitioned since the last CNOR (225 species), as well as for one new candidate species, the Miami blue butterfly, that was petitioned prior to this CNOR but for which we have not already published a separate warranted-but-precluded 12-month finding (we have previously published a separate substantial 90-day petition finding for this species).

Our review included updating the status of and threats to petitioned candidate or listed species for which we published findings, pursuant to section 4(b)(3)(B), in the previous CNOR (for the Columbian Basin DPS of the greater sage-grouse, see below). We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12-month findings on the petitions for these species.

We have identified the candidate species for which we received petitions by the code "C*" in the category column on the left side of Table 1. As discussed above, the immediate publication of proposed rules to list these species was precluded by our work on higher priority listing actions, listed below, during the period from April 19, 2004, through May 2, 2005.

We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available. This review will determine if a change in status is warranted, including the need to emergency-list a species under section 4(b)(7) of the Act.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why these particular candidates warrant listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and Wildlife Service's Internet Web site: <http://endangered.fws.gov/>. As described above, under section 4 of the Act we may identify and propose species for listing based on the factors identified in section 4(a)(1), and section 4 also provides a mechanism for the public to petition us to add a species to the lists of species determined to be threatened species or endangered species pursuant to the Act. Below we describe the actions that continue to preclude the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action, and we describe the expeditious progress we are making to add qualified species to the lists of endangered or threatened species.

Preclusion and Expeditious Progress

Preclusion is a function of a species' listing priority in relation to the resources that are available and competing demands for those resources. (As described above in the Summary, the listing priority of a species is represented by the listing priority number we assign to it.) Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual appropriations process, and we cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions, *i.e.*, more complex actions generally are more costly. For example, for FY 2002 to FY 2004, the costs (excluding publication costs) for conducting a 12-month finding, without a proposed rule, ranged from

approximately \$9,600 for one species with a restricted range and involving a relatively uncomplicated analysis, to \$305,000 for another species that was wide-ranging and involved a complex analysis.

In FY 1998 and for each fiscal year since then, Congress placed a statutory cap on funds which may be expended for listing and critical habitat actions (*i.e.*, the Listing Program), equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other ESA functions, or for other Service programs, from being used for listing or critical habitat actions (see House Report 105–163, 105th Congress, 1st Session).

Beginning in FY 2002, Congress also put in place the critical habitat “subcap,” which put an upper limit on the Listing Program funds that could be spent on work related to critical habitat designations for already listed species. Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress put the subcap in place to ensure that some funds would be available to make other listing determinations: “The critical habitat designation subcap will ensure that some funding is available to address other listing activities” (H.R. Rep. No. 103, 107th Cong., 1st Sess. 2001 at 30, 2001 WL 695998). Because the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, Congress in effect determined, through the listing cap and the critical habitat subcap, the amount available for other listing activities. It is this amount (*i.e.*, the funds in the listing cap other than those covered by the critical habitat subcap) that is used in the determination here of preclusion and expeditious progress.

Congress also has recognized that the availability of resources was the key element in deciding whether we would issue a listing proposal or make a “warranted but precluded” finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were “not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition

[*i.e.* for a lower-ranking species] unwise.” Therefore, in fiscal year 2004, the outer parameter within which “expeditious progress” must be measured is that amount of progress that could be achieved by spending \$3.38 million, which was the amount available in the Listing Program appropriation not within the critical habitat subcap (*i.e.*, all funds within the critical habitat subcap were used to comply with court orders or court-approved settlement agreements, and thus were not available for other listing activities).

Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. However, through court orders and court-approved settlements, federal district courts have mandated that we must complete certain listing activities with respect to specified species and have established the schedules by which we must complete those activities. The species involved in these court-mandated listing activities are not always those that we have identified as being most in need of listing. A large majority of the appropriation available for new listings of species (of the \$3.38 million) was consumed by such court-mandated listing activities in FY 2004, and by ordering or sanctioning these actions the courts essentially determined that these were the highest priority actions to be undertaken with available funding. Accordingly, in FY 2004, FWS had little discretion to determine what listing activities to undertake and what species to address. Copies of all of the court orders and settlement agreements referred to below are available from the Service and are part of the administrative record for these resubmitted petition findings.

On November 10, 2003, the President signed the 2004 Interior and Related Agencies Appropriations Act (Pub. L. 108–108), which, as a result of the subcap, in effect included \$3,386,000 for listing activities not related to critical habitat designations for species that already are listed. This appropriation was fully allocated to fund the following categories of actions in the Listing Program: emergency listings; essential litigation-related, administrative and program management functions; compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 listing actions

with absolute statutory deadlines; and high-priority listing actions. Based on the available funds and their allocation for these purposes, no FY 2004 funds were available for listing actions for any of the candidate species included in Table 1 of this notice, except for some funds that were used for work on the Southwest Alaska population of the northern sea otter, boreal toad, and salt creek tiger beetle. Specific details regarding the individual actions taken using the FY 2004 funding, which precluded our ability to undertake listing proposals for any of the candidate species, except these three species noted above, are provided below.

We note here that the category of "high-priority listing actions" mentioned above refers to actions for which no timeline has been established by a court order or settlement agreement, and that also are not subject to an absolute statutory deadline. Our ability to work on such listing actions is quite limited. In recent years, our allocation of Listing Program funds has included a limited amount of funding (\$100,000) to each Regional office to ensure that the office maintains minimal core capacity for listing actions (*e.g.*, evaluating the status of species to help ensure that emergency listing action can be taken if necessary, participating in work to meet the statutory requirement to annually review and make findings on resubmitted petitions). In a Region that faces a relatively limited workload in the Listing Program with regard to deadlines resulting from court orders or settlement agreements, and a relatively limited workload related to meeting statutory deadlines, some of this "capability" funding may be available to address high priority listing actions. However, in most Regions the limited amount of capability funding for Regional offices included in an allocation is used for work associated with supporting listing actions related to court orders or settlement agreements, and for meeting statutory deadlines (*i.e.*, there are no funds available for high priority listing actions).

The overall Listing Program situation in FY 2005 is similar to that in FY 2004. For FY 2005, Congress appropriated \$4,043,000 to the listing program that cannot be spent on critical habitat for already listed species (Pub.L. 108-447, signed on December 8, 2004). We have recently prepared the allocation of this appropriation. The \$4,043,000 is fully allocated to fund the following listing actions: any emergency listings; essential litigation-related, administrative, and program

management functions; compliance with court orders or court-approved settlement agreements requiring petition findings or listing determinations; and high-priority listing actions. While being similar to FY 2004, the Listing Program situation for FY 2005 is different in that we estimate that we have approximately \$1.7 million from the critical habitat subcap that is not needed, at this time, to fund critical habitat designations that are the subject of court order or court-approved settlement agreements. We are currently working on allocating this money to our Regions for work on statutorily-required petition findings and potential work on proposed listing determinations for some high-priority candidate species. During the current fiscal year, we will issue proposed listing rules for the highest priority candidate species only if doing so does not jeopardize our ability to comply with court orders, court-approved settlement agreements, or unqualified statutory deadlines. Consequently, as of the date of the publication of this CNOR, we anticipate that we will have only limited FY 2005 funds available to work on proposals to list any of the candidate species included in Table 1 (with the exception of the Salt Creek tiger beetle which is work that was done per a court-approved settlement agreement and the Gunnison sage-grouse, which is a high priority listing action, as explained below), and consequently we continue to find that proposals to list these species are warranted but precluded. We note also that all of the actions that demonstrate our expeditious progress on listing that we have completed to date or will complete in FY 2005 (see below) contribute to the preclusion of work on listing proposals for these candidate species.

In addition to being precluded by lack of available funds, work on proposed rules for candidates with lower priority (*i.e.*, those that have listing priority numbers of 4–12) is also precluded by the need to issue proposed rules for higher priority species facing high-magnitude, imminent threats (*i.e.*, listing priority numbers of 1–3). Table 1 shows the listing priority number for each candidate species. Finally, 12-month "warranted but precluded" petition findings for reclassification of threatened species to endangered are lower priority, since the listing of the species already affords the protection of the Act and implementing regulations.

As explained above, part of the basis for making a warranted-but-precluded finding is that expeditious progress is being made to add qualified species to the Lists. Our progress in FY 2004

includes work in the following categories: (1) Evaluation of the potential need for emergency listing of 1 species; (2) preparation and publication of final listing determinations involving 10 species; (3) preparation and publication of a proposed listing action for 1 species; (4) preparation of proposed or final listing actions (not yet completed so not yet published) for 6 species; (5) and petition findings for 55 species (11 completed findings; 40 resubmitted; 4 findings not yet completed). Specific information regarding each of these categories for FY 2004 is provided below.

(1) Emergency listings—We worked on a proposed rule to list the Miami blue butterfly. The Miami blue butterfly is restricted to one isolated population on Bahia Honda Key in Florida and is threatened by the combined influences of catastrophic environmental events, habitat destruction or modification, mosquito control activities, potential illegal collection, potential loss of genetic heterogeneity, and potential predation. Work on assessing the status of the species and preparing a listing rule originally was approved for funding and was initiated in FY 2004 because at the time, the Region considered that it was an emergency. We later decided not to exercise our discretion under section 4(b)(7) to emergency list the species (based in part on the existence of a captive-bred population). However, because a review of the species had been conducted and the emergency rule already was drafted, and because it was a high priority species, continued work on the proposed listing was approved. Recently, however, we decided that the limited funds that were available to work on a proposed rule for this species should instead be used to work on higher priority candidate species (*i.e.*, species with a LPN of 2). Therefore, rather than completing and issuing a proposed rule to list this species, we are including it in the CNOR as a new candidate.

(2) Final listing determinations—We prepared and published in the **Federal Register** final listing determinations for ten species, all of which had deadlines mandated by court orders or court-approved settlement agreements, in addition to the absolute statutory deadline imposed by section 4(b)(6). These included final regulations listing eight species and final decisions to withdraw the proposed listing rules for two species. The eight species we listed were: Rota bridled white-eye (69 FR 3022; January 22, 2004; LPN = 2), Santa Catalina Island fox, Santa Rosa Island fox, San Miguel Island fox, and Santa Cruz Island fox (69 FR 10335 for all four

fox subspecies; March 5, 2004; LPN = 3); two plant species (*Nesogenes rotensis* and *Osmoxylon mariannense*) from the Commonwealth of the Northern Mariana Islands (69 FR 18499; April 8, 2004; LPN = 1 and 2, respectively); and the California tiger salamander (69 FR 47211; August 4, 2004; LPN = 3). (We note that the work on the salamander included funding for the designation of critical habitat for the central California distinct population segment (DPS). The critical habitat subcap pertains to critical habitat designations for species already listed; we may use listing funds for critical habitat designation work conducted in conjunction with a listing action, as was the case with this DPS. This work was necessary to comply with the Act's deadline for designating critical habitat: concurrent with listing or within one year thereafter if concurrent designation is not determinable). The two species for which we withdrew proposed listing rules were: the slickspot peppergrass (69 FR 3094; January 22, 2004; previously LPN = 2); and *Tabernaemontana rotensis* (a plant species with LPN = 2); the decision to not list this species was included as part of the **Federal Register** publication of the final rules listing the two plant species from the Commonwealth of the Northern Mariana Islands, mentioned above (69 FR 18499).

(3) We prepared and published a proposed regulation to list the southwest Alaska distinct population segment of the northern sea otter, which has an LPN = 3 (69 FR 6600; February 11, 2004). This DPS occurs in nearshore locations from Attu Island in the west to Kamishak Bay in the east, including waters along the Aleutian Islands, the Alaska Peninsula, and the Kodiak archipelago. Although its range has not been curtailed, this population has declined by 56–68 percent since the mid-1980's and the decline shows no evidence of abating (see proposed rule for additional information). This proposal was not the result of a deadline established by a court order or a court-approved settlement agreement. Rather, this was the highest priority listing action for the Alaska Region. (Initially we determined that the Aleutian Islands DPS of the northern sea otter was a candidate with LPN = 3 (66 FR 54807), and subsequently determined that the DPS encompasses southwest Alaska.) The Alaska Region generally has not faced the relatively heavy Listing Program workload experienced by several other Regions, and consequently was able to use their limited Regional office capability funding in FY 2004 to support the completion of this proposed

listing regulation. We could not have utilized this capability funding to complete listing actions in other Regions without eliminating the ability of this Region to monitor the status of candidate species and address any emergency situations that might arise.

(4) We funded work on proposed or final listing actions for 6 species for which work was not completed in FY 2004. This included work on final listing actions for the Sacramento Mountains checkerspot butterfly, the Mariana fruit bat (LPN = 3), and the southwest Alaska DPS of the northern sea otter (LPN = 3). It also included work on proposed listing actions for the boreal toad (LPN = 3), Salt Creek tiger beetle (LPN = 3), and Miami blue butterfly. The work on all these species, except on the northern sea otter (see (3) above) and Miami blue butterfly (see (1) above), was in response to a court order or a court-approved settlement agreement, and all of the final listing determinations are subject to absolute statutory deadlines under section 4(b)(6).

(5) We funded work on 55 petition findings. This involved 90-day findings, initial 12-month findings, and findings on resubmitted petitions. As explained below, in some instances, the work has been based on meeting deadlines established by court order or by settlement agreements. In other instances, the work has been done in order to meet statutory deadlines. All 12-month findings are subject to an unqualified statutory deadline. With regard to 90-day findings, the decision in *Biodiversity Legal Foundation v. Badgley*, 309 F. 3d 1166 (9th Cir. 2002), held that the Act requires that 90-day petition findings (*i.e.*, the initial finding as to whether a petition contains substantial information, which the Act directs us to make within 90 days of receipt of a petition, if practicable) must be made no later than 12 months after receipt of the petition, regardless of whether it is practicable to do so. Thus, all 90-day findings are arguably subject to an absolute statutory deadline. As a result of this ruling, which changed our interpretation of section 4(b)(3) of the Act, we have been working to issue petition findings on most of the outstanding petitions for those species that we have not previously determined to warrant candidate status.

Some petition findings are “complete” actions. This includes 12-month petition findings in which we determine that listing was not warranted and 90-day petition findings in which we determine that the petition did not present substantial information. In these cases, our listing work is complete.

In FY 2004, we funded work on and published 11 petition findings for the following species: wolverine (not-substantial 90-day finding) (69 FR 60112; October 21, 2003); eastern subspecies of the greater sage-grouse (not-substantial 90-day finding) (69 FR 933; January 7, 2004); Midvalley fairy shrimp (not-warranted 12-month finding) (69 FR 3592; January 26, 2004); *Cymopterus deserticola* (desert cymopterus—substantial 90-day finding) (69 FR 6240; February 10, 2004); fisher (West coast DPS) (warranted-but-precluded 12-month finding) (69 FR 18769; April 8, 2004); Florida black bear (partial remand of not-warranted 12-month finding) (69 FR 2100; January 14, 2004); greater sage-grouse (substantial 90-day finding) (69 FR 21484; April 21, 2004); Colorado river cutthroat trout (not-substantial 90-day finding) (69 FR 21151; April 20, 2004); New England cottontail (substantial 90-day finding) (69 FR 39395; June 30, 2004), black-tailed prairie dog (not-warranted 12-month resubmitted petition finding) (69 FR 51217; August 18, 2004); and, western gray squirrel (not substantial 90-day finding) (69 FR 58115). All 12-month findings have absolute statutory deadlines. Because of *Badgley*, all 90-day findings arguably also have absolute statutory deadlines. In addition, the work on all these species, with the following exceptions, was in response to court orders or court-approved settlement agreements. The New England cottontail was the highest priority listing action for the Northeast Region. The Northeast Region generally has not faced the relatively heavy Listing Program workload experienced by several other Regions, and consequently was able to use their limited Regional office capability funding in FY 2004 to support the completion of this petition finding. We could not have utilized this capability funding to complete listing actions in other Regions without eliminating the ability of this Region to monitor the status of candidate species and address any emergency situations that might arise. Work on the greater sage-grouse was a high priority action since we were already working on sage-grouse issues related to the court-ordered petition finding for the eastern sage-grouse. In our 90-day finding for the eastern sage-grouse, we committed to respond to the listing petitions for the greater sage-grouse within 90 days, and to make a 12-month finding within 12 months, if required. Having made this public commitment, and given the history of litigation involving various populations

of sage-grouse, we accorded the same priority to these petition findings as we would to a court-ordered petition finding. Work on the black-tailed prairie dog was a high priority listing action; we had previously funded much of the work on this species in 2000 when we made the initial 12-month warranted-but-precluded petition finding and in 2001–2003 when we made resubmitted petition findings that listing was still warranted but precluded. The Mountain-Prairie Region was able to use some of their capability funds from FY 2004 to make the not-warranted petition finding for the black-tailed prairie dog.

The allocated funds also supported work on petition findings that were not completed in FY 2004, which involved work on findings for the following 4 species: white-tailed prairie dog (90-day finding), greater sage-grouse (12-month finding), *Bromus arizonicus* (Arizona brome “90-day finding), and *Nassella cernua* (nodding needlegrass—90-day finding). Work on the white-tailed prairie dog was in response to a court order, while the work on the sage-grouse was a high priority listing action with a statutory deadline (see above). Work on the statutorily-required petition findings for Arizona brome and nodding needlegrass was done using a small amount of capability funds that was left at the end of the fiscal year; this was a high priority for the Pacific Region.

In addition, we completed resubmitted petition findings required by statute for 40 petitioned species that are candidates. We published these findings on May 4, 2004, as part of the previous Candidate Notice of Review (CNOR) (69 FR 24876). Since we had identified many of these species as candidates prior to receiving a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program (a separate budget item within the Endangered Species Program).

Our anticipated progress in FY 2005 includes work in the following categories: (1) Preparation and publication of final listing actions for 9 species; (2) initial work toward preparation and publication of proposed listing actions for 4 species; (3) and work on petition findings for 17 species that are not candidate species, initial petition findings for 225 candidate species that were petitioned since the last CNOR, and resubmitted petition findings for 37 candidate species that were petitioned prior to the last CNOR. Specific information regarding each of these categories for FY 2005 is provided below. We note also that Regions will continue to monitor the status of

candidates and prepare emergency listing packages as needed.

(1) We are funding work on the final listing determinations for the following species: Mariana fruit bat (final listing rule was published on January 6, 2005 (70 FR 1190)), southwest Alaska DPS of the northern sea otter, Gila chub, Salt Creek tiger beetle, Sacramento Mountains checkerspot butterfly (withdrawal of the proposed rule was published on December 21, 2004 (69 FR 76428)), and four Southwestern invertebrates (Koster's tryonia snail, Pecos assiminea snail, Roswell springsnail, and Noel's amphipod). All of these final listing determinations are responding to court orders or court-approved settlement agreements, with the exception of the work on the final listing determination for the southwest Alaska DPS of the northern sea otter (see above for explanation on why this work was funded). Now that the sea otter is proposed for listing, a final listing determination is subject to an absolute statutory deadline.

(2) We are funding proposed listing determinations for the boreal toad and the Salt Creek tiger beetle, and a remanded final listing determination for the cactus ferruginous pygmy owl, pursuant to court-approved settlement agreements and a court order. The proposed listing rule for the Salt Creek tiger beetle was published on February 1, 2005 (70 FR 5101). The work on a proposed listing determination for the boreal toad has not been completed and, thus, we are making a resubmitted petition finding for this species within this CNOR. Additionally, we are funding a proposed listing determination for the Gunnison sage-grouse, which is a high priority listing action (LPN = 2) and the subject of litigation.

(3) We also are funding work on petition findings for the following species: white-tailed prairie dog (not-substantial 90-day finding published on November 9, 2004 (69 FR 64889)), Queen Charlotte goshawk (remanded not-warranted 12-month finding), pygmy rabbit (range-wide 90-day and 12-month findings), greater sage-grouse (entire range) (12-month not-warranted finding published January 12, 2005 (70 FR 2273)), California spotted owl (90-day finding), Yellowstone cutthroat trout (12-month finding), *Cicurina cueva* (cave spider—90-day and 12-month findings) (substantial 90-day finding published on February 1, 2005 (70 FR 5123)), four species of Pacific lamprey (not-substantial 90-day findings published on December 27, 2004 (69 FR 77152 and 69 FR 77158)), three species of springsnail (substantial 90-day

finding published on April 20, 2005 (70 FR 20512)) (*Cymopterus deserticola* (desert cymopterus—12-month finding), *Dalea tentaculoides* (Gentry's indigobush “90-day and 12-month findings) (substantial 90-day finding published on February 2, 2005 (70 FR 5401)), *Ptilagrostis porterii* (porter feathergrass) (not-substantial 90-day finding published on February 4, 2005 (70 FR 5959)). The work on all of the above species is pursuant to court orders or court-approved settlement agreements, except for work on the greater sage-grouse (see 5) above under FY 2004 work) and the California spotted owl, which is being done in relation to litigation. We also funded work on initial petition findings for 225 candidate species (species petitioned after the last CNOR) and resubmitted petition findings for 37 petitioned candidate species (species petitioned prior to the last CNOR). As explained above, these initial and resubmitted petition findings are required by statute and findings for 261 of them are being published as part of this CNOR (the resubmitted petition finding for the Columbia Basin DPS of the greater sage-grouse will be completed later, as we have new information that needs to be evaluated). We are also funding work on the next annual review of those resubmitted petition findings which will be published as part of the next CNOR. Because the majority of these species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program. We also continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

As with our “precluded” finding, “expeditious progress” is a function of the resources that are available and the competing demands for those funds. As discussed above, the funds in the Listing Program that would be otherwise available for adding other qualified species to the Lists in FY 2004 and FY 2005 have been spent or must be spent on complying with court orders and court-approved settlement agreements to make petition findings, court orders and court-approved settlement agreements to make final listing determinations for other species, meeting statutory deadlines for petition findings or listing determinations, a few

high-priority Service-initiated listing determinations, essential litigation support, and administrative and management tasks.

Because virtually all of the money to add qualified species to the list is consumed in complying with court orders or court-approved settlement agreements requiring petition findings or listing determinations, and essential litigation-related, administrative, and program management functions related to these findings and determinations, we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Findings for Petitioned Candidate Species

Mammals

Pacific Sheath-tailed Bat (*Emballonura semicaudata semicaudata*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia and is the only insectivorous bat recorded from a large part of this area. Historically, the Pacific Sheath-tailed bat occurred in American and Independent Samoa, Guam, Commonwealth of the Northern Mariana Islands (CNMI), Caroline Islands, Tonga, Fiji, and Vanuatu. Four subspecies are recognized: *E. s. rotensis*, endemic to the Mariana Islands; *E. s. sulcata*, occurring in Chuuk and Pohnpei; *E. s. palauensis*, found in Palau; and *E. s. semicaudata*, occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu.

The primary threats to the species as a whole include the loss of roosting caves (through various means), the loss of foraging habitat due to deforestation, disturbance by feral ungulates, natural disasters, and possibly pesticide use in the Mariana Islands. Disturbances to caves and burning of forests have contributed to the decline of bats in Fiji. These threats are occurring already, have been occurring for several decades, and are affecting a large proportion of the population.

This subspecies on American Samoa declined from around 11,000 bats in

1982 to only 200 in 1998. Since that time, few bats have been observed; however, the reasons for the decline of the subspecies are unclear. Two caves at Anapeape Cove were reported as roosting sites for most of the bats estimated in 1976 and 1977. Both caves were severely damaged during several typhoons between 1987 and 1992, and no bats were reported in either cave during 1993 surveys. Only small numbers of bats have been observed in other caves during past surveys, but there is no information on how many other caves exist or how many bats they could support. Predation by rats (*Rattus sp.*) and other introduced species may also be significant. Surveys of roost caves and sweeps in various locations in American Samoa over the past year indicate the Pacific sheath-tailed bat may be there, however, no bats were detected in 80 percent of the caves on Tutuila. The listing priority number for the Pacific sheath-tailed bat remains at 3, because the magnitude of the threats facing the species is high, the threats are imminent, and the taxon in question is a subspecies.

Pacific Sheath-tailed Bat (*Emballonura semicaudata rotensis*), Guam and the Commonwealth of the Northern Mariana Islands—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. See the information provided above (for the Pacific sheath-tailed bat, *semicaudata* subspecies) regarding the former range, other subspecies, and threat the species as a whole.

This subspecies formerly occurred on Guam, and in the CNMI on Rota, Aguiuan, Tinian, Saipan, and possibly Anatahan and Maug. The Pacific sheath-tailed bat is believed to be extirpated from all islands in the Mariana Islands, except Aguiuan. Predation by the introduced brown treesnake (*Boiga irregularis*) may have played a significant role in the extirpation of the species on Guam, and predation by rats (*Rattus sp.*) and monitor lizards (*Varanus indicus*) may also have been significant factors in extirpations on Guam and other islands. The 2003 surveys on Aguiuan, the only island that still has a population of Pacific sheath-tailed bats in the Marianas, indicate the population is about 400–500 animals. The Listing Priority Number for the Pacific sheath-tailed bat remains at 3, because the magnitude of the threats facing the species is high, the threats are imminent, and the taxon in question is a subspecies.

Fisher, West Coast DPS (*Martes pennanti*)—The following summary is

based on information in our files and in the Service's initial "warranted-but-precluded" finding published in the **Federal Register** on April 8, 2004 (68 FR 18770). The fisher is a carnivore in the family Mustelidae and is the largest member of the genus *Martes*.

Historically, the West Coast population of the fisher extended south from British Columbia into western Washington and Oregon, and in the North Coast Ranges, Klamath-Siskiyou Mountains and Sierra Nevada in California. The fisher is believed to be extirpated or reduced to scattered individuals from the lower mainland of British Columbia through Washington, and in the central and northern Sierra Nevada range in California. Natural populations of the fisher currently occur in the North Coast Ranges of California, the Klamath-Siskiyou Mountains of northern California and southern Oregon, and in isolated populations occurring in the southern Sierra Nevada in California. They also occur in the southern Cascade Range in Oregon as descendants through a reintroduction effort. There is a lack of precise empirical data on West Coast DPS fisher numbers. However, the lack of detections over much of its historic range, the high degree of genetic relatedness within some populations, and the fact that populations of native fisher in California are separated by four times the species' maximum dispersal distance, indicate that the likely extant fisher populations are small and apparently isolated from one another.

Major threats that fragment or remove key elements of fisher habitat include various forest vegetation management practices, such as timber harvest and fuels reduction treatments; stand-replacing fire; Sudden Oak Death Phytophthora; urban and rural development; recreation development; and roads. Major threats to fisher that lead to direct mortality and injury include collisions with vehicles, incidental trapping of fisher during trapping for other species, predation and viral diseases such as rabies and canine and feline distemper. Existing regulatory mechanisms on Federal, State, and private lands affect key elements of fisher habitat, yet they provide insufficient certainty that conservation efforts will be implemented or that they will be effective in reducing the level of threats to the West Coast DPS of the fisher. However, the threats are nonimminent as the remaining areas containing fisher populations appear to be stable or not rapidly declining. The greatest threats to these remaining fisher populations are issues related to small isolated

populations and the potential for further loss and fragmentation of habitat over time. The listing priority number for this DPS remains a 6 (threats are of a high magnitude but are nonimminent).

Mazama pocket gopher (*Thomomys mazama* (ssp. *couchi*, *glacialis*, *louiei*, *melanops*, *pugetensis*, *tacomensis*, *tumuli*, *yelmensis*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files and the petition received on January 7, 2003.

Palm Springs round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information in our files. No new information was provided in the petition received on May 11, 2004.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—See resubmitted petition finding published in the **Federal Register** on December 27, 2004 (69 FR 77167).

Washington ground squirrel (*Spermophilus washingtoni*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files and the petition received on March 2, 2000.

Birds

Spotless crane, American Samoa DPS (*Porzana tabuensis*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Kauai creeper (*Oreomystis bairdi*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Yellow-billed cuckoo, western U.S. DPS (*Coccyzus americanus*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files and the petition received on February 9, 1998. See also our 12-month finding published on July 25, 2001 (66 FR 38611).

Many-colored fruit-dove (*Ptilinopus perousii perousii*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Friendly ground-dove (*Gallicolumba stairi stairi*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Streaked horned lark (*Eremophila alpestris strigata*)—The following summary is based on information contained in our files and the petition received on January 7, 2003. The streaked horned lark is one of 21 subspecies of North American horned larks. According to recent genetic analyses, this subspecies is unique, isolated, and has little genetic diversity, indicating it has been evolving independently for some time. Historically, the breeding range extended from southern British Columbia, south through the Puget lowlands and along the Washington coast, and through the Willamette Valley of Oregon. Currently, the subspecies is extirpated in British Columbia. Only 11 breeding sites are known in Washington, and the breeding population in Oregon is estimated to include less than 300 birds. Threats include loss and degradation of habitat due to conversion of native grassland to other uses, encroachment of woody vegetation due to fire suppression, invasion of habitat by nonnative plants and animals, human disturbance, nest predation, deposition of dredge spoil, and conflict with airport development and maintenance activities. The magnitude of threats is high because few individuals are found in a small number of populations having patchy, isolated distributions in habitats highly desirable for development and threatened by invasive plant species. Populations occur in suitable habitat on airports and military bases, where management and training activities can affect breeding. Specific threats are not known to be imminent, and some conservation measures have been initiated by land managers. The LPN for this subspecies remains a 6.

Kittlitz's murrelet (*Brachyramphus brevirostris*)—The following summary is based on information contained in our files and the petition received on May 9, 2001. Kittlitz's murrelet is a small diving seabird whose entire North American population, and most of the world's population, inhabits Alaskan coastal waters discontinuously from Point Lay south to northern portions of Southeast Alaska. Most recent population estimates (9,500–26,700 birds) indicate that it has the smallest population of any seabird considered a regular breeder in Alaska. This species appears to have undergone significant

population declines in four of its core population centers—Prince William Sound, Malaspina Forelands, Glacier Bay, and Kenai Fjords. As populations become smaller, they become increasingly vulnerable to events that may result in local extirpation. Causes for the declines in populations are not well known, but we believe that glacial retreat and oceanic regime shifts are the most likely causes. Kittlitz's murrelets seem to prefer areas near stable or advancing tidewater glacier faces as these areas have higher primary productivity compared to siltier, less saline fjords with receding glaciers, but the ecological mechanisms linking Kittlitz's murrelets to their preferred habitats remains a topic for further research. Other causes of decline may include: habitat loss or degradation, increased adult and juvenile mortality, and low recruitment. Existing regulatory mechanisms appear inadequate to stop or reverse population declines or to reduce the threats to this species. Due to the nonimminent threats of high magnitude, we are retaining a listing priority number of 5 for this species.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files and the petition received on April 16, 2002.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—The following summary is based on information contained in our files and the petition received on October 5, 1995. Additional information can be found in the 12-month finding published on June 7, 1998 (63 FR 31400). Biologists estimate that the occupied range has declined by 92 percent since the 1800s. The most serious threats to the lesser prairie-chicken are loss of habitat from conversion of native rangelands to introduced forages and cultivation, cumulative habitat degradation caused by severe grazing, woody plant invasion of open prairies, fire suppression, herbicides, and habitat fragmentation caused by structural and transportation developments. Many of these threats may exacerbate the normal effects of periodic drought on lesser prairie-chicken populations. In many cases, the remaining suitable habitat has become fragmented by the spatial arrangement of properties affected by these individual threats. We view current and continued habitat fragmentation to be a serious ongoing threat that facilitates the extinction process through several mechanisms: remaining habitat patches may become smaller than necessary to meet the yearlong requirements of

individuals and populations, necessary habitat heterogeneity may be lost to large areas of monoculture vegetation and/or homogenous habitat structure, areas between habitat patches may harbor high levels of predators or brood parasites, and the probability of recolonization decreases as the distance between suitable habitat patches expands.

The Service is currently working to quantify the ongoing level of habitat fragmentation throughout the species range. Although Federal lands comprise only five percent of currently occupied habitat, these tracts are located in areas essential to population recovery and dispersal. As a result, the Service views habitat management considerations on Federal lands within current and historic range as very important. Due to their potential magnitude to affect the species, current planning efforts for grazing and wind, oil, and gas development on public lands is of particular relevance to the future listing status of the species.

Based on all currently available information, we find that ongoing threats to the lesser prairie-chicken, as outlined in the 12-month finding, remain unchanged and lesser prairie-chickens continue to warrant Federal listing as threatened. We have determined that the overall magnitude of threats to the lesser prairie-chicken throughout its range are moderate, and that the threats are ongoing; thus, they are considered imminent. Consequently, a listing priority number of 8 remains appropriate for the species. Greater sage-grouse, Columbia Basin DPS (*Centrocercus urophasianus*)—We have not updated our finding with regard to the Columbian Basin DPS of the greater sage-grouse in this notice. In the previous CNOR, we found that a listing proposal for this DPS was still warranted but precluded by higher priorities, and we assigned the DPS a listing priority number of 6. Since that time, new information has become available through the status review of the greater sage-grouse (range-wide). We will use the best scientific and commercial information available (including, but not limited to information that became available during the rangewide status review) to reevaluate whether the Columbia Basin population still qualifies as a DPS under our DPS policy, and if it does, whether the DPS still warrants a listing proposal. Once that evaluation is completed we will publish an updated finding for this DPS in the **Federal Register** either in the next CNOR or in a separate notice.

Gunnison sage-grouse (*Centrocercus minimus*)—The following summary is

based on information contained in our files and the petition received on January 25, 2000. For greater detail, also see 65 FR 82310 (December 28, 2000). The range of the Gunnison sage-grouse has been reduced to less than 25 percent of its historical range, distributed across 8 populations. Size of the range and quality of its habitat have been reduced by direct habitat loss, habitat fragmentation, and habitat degradation from building development, road and utility corridors, fences, energy development, conversion of native habitat to hay or other crop fields, alteration or destruction of wetland and riparian areas, inappropriate livestock management, and creation of large reservoirs. Numerous conservation actions have occurred and funding and plans for additional conservation actions are in place or ongoing. Despite these actions, sage-grouse numbers declined significantly in 2003 (likely due to the 2002 drought) and remained at a low level in 2004. Given ongoing and potential individual and cumulative threats, we are leaving the listing priority at a 2 at this time.

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files and the petition received on May 8, 1989. No new information was provided in the second petition received on May 11, 2004. The band-rumped storm-petrel is a small, widespread seabird found in the subtropics of the Pacific and Atlantic Oceans. In the Pacific, there are three widely separated breeding populations—one in Japan, one in Hawaii and one in the Galapagos. Populations in Japan and the Galapagos are comparatively large and number in the thousands, while the Hawaiian birds represent a small, remnant population of possibly only a few hundred pairs. The species is currently known to nest only on Kauai but is suspected to nest on Hawaii. Although small populations do occur on Maui and Hawaii, we have been unable to determine if they are viable; certainly they are not large and they represent a fraction of prehistoric distribution. The current primary threats to the species, predation by nonnative species and mortality associated with disorientation by lights, have been occurring for several decades, and are affecting a large proportion of the population.

Predation by introduced species has played a significant role in reducing storm-petrel numbers and exterminating colonies in the Pacific and other locations worldwide. Several alien predators are found throughout the main Hawaiian Islands, including

Polynesian rats (*Rattus exulans*), black rats (*R. rattus*), Norway rats (*R. norvegicus*), feral and domestic cats (*Felis catus*), small Indian mongooses (*Herpestes auropunctatus*), and barn owls (*Tyto alba*). Band-rumped storm-petrels nest only in remote, steep, rocky areas, probably because these areas are less accessible to predators. Artificial lighting of roadways, resorts, ballparks, residences and other developments attracts and confuses night-flying, storm-petrel fledglings, resulting in “fall-out” and collisions with buildings and other objects. “Fall-out” is a term used to describe when fledglings are attracted to lights, become disoriented and fall to the ground where they are often killed by cars or predators. Over a 12-year period from 1978 to 1990, Harrison et. al. reported that 15 band-rumped storm-petrels, 13 of which were young, were recovered on Kauai as a result of fall-out. The impact from artificial lighting is expected to increase as human population grows and development continues on Kauai and other Hawaiian Islands. The total population size is poorly known, but is unlikely to number more than a few hundred pairs. The listing priority number for the band-rumped storm-petrel remains at 3, because the magnitude of the threats facing the species is high, the threats are imminent, and the taxon in question is a distinct population segment.

Elfín woods warbler (*Dendroica angelae*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The elfín woods warbler has been documented from four locations in Puerto Rico: Luquillo Mountains, Sierra de Cayey, and the Commonwealth forests of Maricao and Toro Negro. Habitat destruction from expansion of public facilities, sun coffee plantations, timber management, disruption of breeding activities, potential predators, and catastrophic natural events threaten this species. These threats are not imminent because most of the range of this species is within protected lands. The listing priority number remains a 5 for this species.

Reptiles

Sand dune lizard (*Sceloporus arenicolus*)—see resubmitted petition finding published in the **Federal Register** on December 27, 2004 (69 FR 77167).

Eastern massasauga (*Sistrurus catenatus*)—The following summary is based on information contained in our files. No new information was provided in the

petition received on May 11, 2004. The eastern massasauga is one of three recognized subspecies of massasauga. It is a small, thick-bodied rattlesnake that occupies shallow wetlands and adjacent upland habitat in portions of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Wisconsin, and Ontario. Although the current range of *S. c. catenatus* resembles the subspecies' historical range, the geographic distribution has been restricted by the loss of the subspecies from much of the area within the boundaries of that range. Approximately 40 percent of the counties that were historically occupied by *S. c. catenatus* no longer support the subspecies. *S. c. catenatus* is currently considered imperiled in every state and province it occupies. Each state and Canadian province across the range of *S. c. catenatus* has lost more than 30 percent, and for the majority more than 50 percent of their historical populations. Furthermore, less than 35 percent of the remaining populations are considered secure.

Approximately 59 percent of the remaining *S. c. catenatus* populations occur wholly or in part on public land, and State-wide and/or site-specific Candidate Conservation Agreements with Assurances (CCAAs) are currently being developed for many of these areas in Iowa, Illinois, Michigan, Missouri, Ohio, and Wisconsin. Populations soon to be under CCAs and CCAAs are expected to have a high likelihood of persisting and remaining viable. Other populations are likely to suffer additional losses in abundance and genetic diversity and some will likely be extirpated unless threats are removed in the near future. Therefore, the magnitude of threats from habitat modification, habitat succession, incompatible land management practices, illegal collection for the pet trade, and human persecution is moderate overall with most imminent threats occurring to remaining populations on private lands. Due in large part to the numerous CCAAs currently being developed and implemented, we do not believe emergency listing is warranted and have kept the listing priority number at 9 for this eastern massasauga subspecies.

Black pine snake (*Pituophis melanoleucus lodingi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. There are historical records for the black pine snake from one parish in Louisiana, 14 counties in Mississippi, and 3 counties in Alabama west of the

Mobile River Delta. Black pine snake surveys and trapping indicate that this species has been extirpated from Louisiana and from two counties in Mississippi. Moreover, the distribution of remaining populations has become highly restricted due to the destruction and fragmentation of the remaining longleaf pine habitat within the range of the species. Most of the known Mississippi populations are concentrated in the DeSoto National Forest. Populations in Alabama occupy private, nonindustrial timberland where they have an uncertain future due to habitat loss and degradation. Other factors affecting the black pine snake include vehicular mortality and low reproductive rates which magnify other threats and increase the likelihood of local extinctions. Due to nonimminent threats of high magnitude caused by the past destruction of most of the longleaf pine habitat of the black pine snake, and persistent degradation of what remains, we are retaining a listing priority number of 6 for this subspecies.

Louisiana pine snake (*Pituophis ruthveni*)—The following summary is based on information contained in our files and the petition received on July 19, 2000. The Louisiana pine snake historically occurred in fire-maintained longleaf pine ecosystems of west-central Louisiana and extreme east-central Texas. Louisiana pine snakes are closely associated with Baird's pocket gophers (*Geomys breviceps*) and make extensive use of their burrow systems for foraging, nocturnal and diurnal retreats, escape from predators and fire, and for hibernation sites. Within some of the best remaining habitat in their historic range, Louisiana pine snakes have not been documented in over a decade. Results of Louisiana pine snake trapping and radiotelemetry surveys suggest that extensive population declines and local extirpations have occurred during the last 50 to 80 years.

Most of the historical longleaf pine habitat of the Louisiana pine snake has been destroyed, and the habitat quality of that which remains has been degraded due to logging, fire suppression, roadways, short-rotation silviculture, and grazing. Louisiana pine snake habitat loss is continuing, albeit at a slower rate than in the past. The best remaining Louisiana pine snake habitat occurs on lands where periodic burning has continued. Other factors affecting Louisiana pine snakes include low fecundity (reproductive output), which magnifies other threats and increases the likelihood of local extinctions, and vehicular mortality, which may significantly effect Louisiana pine snake population and community structure.

The Candidate Conservation Agreement for the Louisiana pine snake, a comprehensive and voluntary partnership encompassing all Federal lands where pine snake occurrences are known, was recently completed in order to protect known Louisiana pine snake populations and maintain the ecosystem upon which it depends. Several private landowners with known Louisiana pine snake populations are interested in joining that partnership or developing a similar one. Nevertheless, while the magnitude of Louisiana pine snake habitat loss is great and the remaining habitat is degraded, continued habitat loss does not represent an imminent threat, because the rate of habitat loss appears to be declining, and pro-active partnerships to address key management concerns and research needs are growing. Due to nonimminent threats of a high magnitude, we continue to assign a listing priority number of 5 to this species.

Cagle's map turtle (*Graptemys caglei*)—The following summary is based on information contained in our files and the petition received on April 26, 1991. Cagle's map turtle occurs in scattered population sites within seven counties in Texas along the Guadalupe, San Marcos, and Blanco Rivers. Loss and degradation of riverine habitat from large and/or small impoundments (dams or reservoirs) is the primary threat to the Cagle's map turtle. One effect of impoundment is the loss of riffle and riffle/pool transition areas used by males for foraging. Depending on its size, a dam itself may be a partial or complete barrier to Cagle's map turtle movement and could fragment populations. Construction of smaller impoundments and human activities on rivers occupied by the Cagle's map turtle have likely eliminated or reduced foraging and basking habitats in the past. Although the water plan in development by the State of Texas is considering reservoirs that have the potential to alter or destroy habitat for this species, firm plans for new reservoir construction have not been made. Cagle's map turtle is also vulnerable to overcollecting and target shooting. Based on the high magnitude of nonimminent threats, we retain a listing priority of 5 for this species.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale Iverson*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Sonoyta mud turtle occurs in a spring and pond at Quitobaquito Springs on Organ Pipe Cactus National Monument in Arizona, and in the Rio Sonoyta and

Quitovac Spring of Sonora, Mexico. Loss and degradation of stream habitat from water diversion and groundwater pumping, along with its very limited distribution, is the primary threat to the Sonoyta mud turtle. Sonoyta mud turtles are highly aquatic and depend on permanent water for survival. The area of southwest Arizona and northern Sonora where the turtle occurs is one of the driest regions of the southwest. Due to continuing irrigated agriculture and development in the region, surface water in the Rio Sonoyta can be expected to dwindle further. This species may also be vulnerable to aerial spraying of pesticides on nearby agricultural fields. Due to imminent threats of a high magnitude, we are keeping the listing priority number of 3 for this subspecies.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—The following summary is based on information contained in our files and the petition received on May 1, 1989. Currently, Columbia spotted frogs appear to be widely distributed throughout southwestern Idaho, eastern Oregon, northeastern and central Nevada, and southeastern Washington, but local populations within this general area appear to be small and isolated from each other. Recent work by researchers in Idaho and Nevada has documented the loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals. Habitat degradation and fragmentation is probably a combined result of past and current influences of heavy livestock grazing, spring alterations, agricultural development, urbanization, beaver control, and mining activities. Fragmentation of habitat may be one of the most significant barriers to Columbia spotted frog recovery and population persistence. Loss of vegetation and/or lowering of the water table as a result of the above mentioned activities can significantly threaten frogs moving from one area to another. Likewise, fragmentation and loss of habitat can prevent frogs from colonizing suitable sites elsewhere.

Two conservation agreements and strategies were signed by Federal, State, County, and university representatives on September 30, 2003, for the central and northeast Nevada subpopulations. The goals of the conservation agreements are to reduce threats to Columbia spotted frogs and their habitat to the extent necessary to prevent populations from becoming extirpated throughout all or a significant portion of

their historic range and to maintain, enhance, and restore a sufficient number of populations of Columbia spotted frogs and their habitat to ensure their continued existence throughout their historic range within those areas. Although these agreements may reduce threats in the future, we retained a listing priority number of 3 for this DPS of the Columbia spotted frog because the threats are imminent and of a high magnitude.

Mountain yellow-legged frog, Sierra Nevada DPS (*Rana muscosa*)—The following summary is based on information contained in our files and the petition received on February 8, 2000. Also see our 12-month petition finding published on January 16, 2003 (68 FR 2283). The mountain yellow-legged frog is restricted to two disjunct areas in California and a portion of Nevada. One area is in the Sierra Nevada and the other area is in southern California (Los Angeles, San Bernardino, Riverside, and San Diego Counties). The distribution of the Sierra Nevada mountain yellow-legged frog is restricted primarily to publicly managed lands at high elevations, including streams, lakes, ponds, and meadow wetlands located in national forests and national parks. Rangewide, it is estimated that the number of mountain yellow-legged frog populations has undergone a 50 to 80 percent reduction.

Direct predation by nonnative fishes has resulted in rangewide population declines and local extirpations. Furthermore, the result of these extirpations is that the remaining populations are fragmented and isolated, making them vulnerable to further declines and local extirpations caused by other factors such as disease. In a recent study, from 1996 to 2003, introduced trout were removed from 5 lakes in a remote area of the Sierra Nevada, with 16 nearby lakes used as controls. The experiment concluded that introduced trout are effective predators on mountain yellow-legged frog tadpoles, and suggested “(i) that the introduction of trout is the most likely mechanism responsible for the decline of this mountain frog and (ii) that these negative effects can be reversed.” To help reverse the decline of the mountain yellow-legged frog, the Sequoia and Kings Canyon National Parks have been removing introduced trout since 2001, and efforts are continuing through the 2004 season. It is likely that disease, specifically chytrid fungus, has also caused the recently observed declines in the species. Although the life history and modes of transmission of chytrid fungus are not well understood, it appears that this pathogen is

widespread throughout the range of the mountain yellow-legged frog within the Sierra Nevada, it is persistent in ecosystems, and it is resilient to environmental conditions such as drought and freezing.

We conclude that all remaining mountain yellow-legged frog populations within the Sierra Nevada are at risk of declines and extirpation primarily as a result of predation by introduced trout and infection by pathogens. We conclude that the overall magnitude and immediacy of threats to the Sierra Nevada distinct population segment of the mountain yellow-legged frog is high. Therefore, we retain a listing priority of 3 for this DPS.

Oregon spotted frog (*Rana pretiosa*)—The following summary is based on information contained in our files and the petition received on May 4, 1989. Historically, the Oregon spotted frog ranged from British Columbia to the Pit River drainage in northeastern California. Based on surveys of historical sites, the Oregon spotted frog is now absent from at least 76 percent of its former range.

The threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, changes in hydrology due to construction of dams and alterations to seasonal flooding, and poor water quality. Additional threats to the species are predation by nonnative fish and introduced bullfrogs. The high magnitude of threat is due to small populations with patchy and isolated distributions and the wide range of threats to both individuals and their habitats. Habitat restoration and management actions have not prevented a decline in the reproductive rates in some populations. Each population is faced with multiple actual and potential threats that could seriously reduce or eliminate any of these isolated populations and further reduce the range of the species. Based on these threats, we retain a listing priority of 2 for the Oregon spotted frog.

Relict leopard frog (*Rana onca*)—The following summary is based on information contained in our files and the petition received on May 9, 2002. Relict leopard frogs are currently known to occur naturally in two general areas of Nevada—near the Overton Arm area of Lake Mead and Black Canyon below Lake Mead. In addition to these natural sites, three translocation sites have been established, two in Nevada and one in Arizona. We estimate that the current distribution is less than 20 percent of the historical distribution. As habitat generalists, relict leopard frogs likely occupied a variety of habitats including

springs, streams, and wetlands characterized by clean, clear water, in both deep and shallow water, and cover/forage such as submerged, emergent, and perimeter vegetation.

The causes for the population declines of this species are not entirely clear, but suggested factors include alteration of aquatic habitat due to agriculture and water development, and the introduction of exotic predators and competitors. The magnitude of threats to the relict leopard frog are high based on its limited numbers and distribution, the presence of nonnative predators, potential alteration of remaining habitat including groundwater pumping, and diversion of surface water. We do not consider threats to be imminent at this time. Although the numbers are low and distribution is limited, efforts are underway to improve habitat and increase numbers through captive rearing and translocation. There are no proposed projects that may result in further habitat degradation. In addition, a conservation agreement and strategy is being developed which is intended to improve the status of the species through prescribed management actions and protection. The effectiveness of the plan in achieving adequate conservation for the relict leopard frog will remain unknown until the plan is completed and implementation is initiated. Therefore, we retain a listing priority of 5 for the relict leopard frog.

Ozark hellbender (*Cryptobranchus alleganiensis bishopi*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Austin blind salamander (*Eurycea waterlooensis*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Austin blind salamander is known to occur in and around three of the four spring sites that comprise the Barton Springs complex in the City of Austin, Travis County, Texas.

Primary threats to this species are degradation of water quality and quantity due to expanding urbanization. The Austin blind salamander depends upon a constant discharge of clean water from the Edwards Aquifer for its survival. Urbanization can dramatically alter the normal hydrologic regime and water quality of an area. An increase in impervious cover (*i.e.* impervious to normal drainage) as a result of development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport.

Pollutants and contaminants that enter the Edwards Aquifer are discharged in salamander habitat at Barton Springs and may have serious morphological and physiological effects to the salamander. As the human population increases in central Texas, the demand on groundwater sources increases. Increased pumping of the Edwards Aquifer can result in reduced springflows that may also detrimentally impact the salamander. Based on the high magnitude of the imminent threats imposed on this species, we are retaining a listing priority number of 2 for this species.

Georgetown salamander (*Eurycea naufragia*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Georgetown salamander is known from spring outlets along five tributaries to the San Gabriel River and one cave in the City of Georgetown, Williamson County, Texas. The Georgetown salamander has a very limited distribution and depends upon a constant discharge of clean water from the Edwards Aquifer for its survival. Primary threats to this species are the same as for the Austin blind salamander above. With imminent threats of high magnitude, we retain a listing priority of 2 for this species.

Salado salamander (*Eurycea chisolmensis*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Salado salamander is historically known from two spring sites, Big Boiling Springs and Robertson Springs, near Salado, Bell County, Texas. Salamanders have not been located at Robertson Springs since 1991. Primary threats to this species are habitat modification and degradation of water quality and quantity due to expanding urbanization. Many of the spring outlets in the City of Salado have been modified by dam construction. Because Big Boiling Springs is located near Interstate 35 and in the center of the city, increasing traffic and urbanization bring increased threats of contamination spills, higher levels of impervious cover, and subsequent impacts to groundwater. The Salado salamander depends upon a constant discharge of clean water from the Edwards Aquifer for its survival. Pollutants and contaminants that enter the Edwards Aquifer can be discharged in salamander habitat, and may cause serious morphological and physiological effects to the salamander. As the human population increases in central Texas, greater demand on groundwater sources occurs. Increased pumping of the

Edwards Aquifer can result in reduced springflows that may also detrimentally impact the salamander. With imminent threats of high magnitude, we are retaining a listing priority number of 2 for this salamander species.

Boreal toad, Southern Rocky Mountains DPS (*Bufo boreas boreas*)—The following summary is based on information contained in our files and the petition received on September 30, 1993. See also our 12-month petition finding published on March 23, 1995 (60 FR 15281). The boreal toad (*Bufo boreas*) can be found throughout most of the mountainous regions of the western United States and was considered common throughout the southern Rocky Mountains (southeastern Wyoming to northern New Mexico). The abundance of the species in the southern Rocky Mountains has declined significantly in the past few decades. While there are 32 populations, only one population in Colorado is considered viable. In the southern Rocky Mountains, the disease chytridiomycosis, resulting from the chytrid fungus *Batrachochytrium dendrobatidis*, is the primary threat to the boreal toad. This fungus is only known to infect amphibians and is the primary suspect in the decline of numerous amphibian species around the world. It is unknown why this fungus has become a problem over the past few decades, or how it moves from one population to another. We continue to give the toad a listing priority of 3, because chytrid fungus infection is an ongoing threat of high magnitude and is likely to extirpate additional infected boreal toad populations.

Yosemite toad (*Bufo canorus*)—The following summary is based on information contained in our files and the petition received on April 3, 2000. See also our 12-month petition finding published on December 10, 2002 (67 FR 75834). The historical range of Yosemite toads in the Sierra Nevada occurs from the Blue Lakes region north of Ebbetts Pass to 5 kilometers (km) (3.1 miles (mi)) south of Kaiser Pass in the Evolution Lake/Darwin Canyon area. Alteration and loss of habitat due to grazing, timber management, water diversion, recreation, and vegetative/fire management are threats. The decline of some populations of the Yosemite toad has been attributed to the effects of poorly managed livestock grazing. The levels of timber harvest and road construction have declined substantially since implementation of the California Spotted Owl Sierran Province Interim Guidelines in 1993, and some existing roads have been, or are scheduled for, decommissioning. Therefore, the risks posed by new roads and timber harvests

have declined, but those already existing still pose risks to the species and its habitat through erosion, vehicular mortality, and contaminant introduction. Due to their water depth, reservoirs represent both a loss of habitat and a barrier to dispersal. In addition, the evidence of an adverse physiological effect of pesticides on Sierra Nevada amphibians in the field indicates that contaminants may be a risk to the Yosemite toad and may have contributed to the species' decline. These factors have probably contributed to the decline of Yosemite toads and currently pose a risk to the species. We determined the magnitude of threats to be moderate, rather than high, because almost all of the species' range occurs on Federal land, which facilitates management of the species by Federal agencies. We determined the threats to the Yosemite toad to be nonimminent. Therefore, we retain a listing priority number of 11 for the Yosemite toad.

Black Warrior waterdog (*Necturus alabamensis*)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Fishes

Arkansas darter (*Etheostoma cragini*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Arkansas darter is a fish with widespread distribution throughout the Arkansas River basin in Arkansas, Kansas, Colorado, Missouri, and Oklahoma. Threats to this species include water quantity depletion such as withdrawal of groundwater within the Arkansas River basin in Kansas, water quality degradation resulting from increased urbanization and agricultural activities, and genetic isolation. The most recent survey data indicate the Arkansas darter still persists at numerous locations which are widely distributed, providing some measure of protection against extirpation resulting from a single randomly occurring event. Data also indicate groundwater withdrawal in a significant portion of the species' range has declined in the last decade. The overall impacts facing this species have been reduced to the point where they represent a low to moderate magnitude threat. Because of these factors, we retain a listing priority of 11 for this species.

Cumberland Johnny darter (*Etheostoma nigrum susanae*)—The following summary is based on

information from our files. No new information was provided in the petition received on May 11, 2004. The Cumberland Johnny darter is a small (approximately 3 inches) member of the family Percidae. The Cumberland Johnny darter is endemic to the upper Cumberland River system, above Cumberland Falls, in Kentucky, and Tennessee. According to recent surveys, it appears that the subspecies is restricted to 16 small streams in Whitley and McCreary Counties, Kentucky, and 2 streams in Scott and Campbell Counties, Tennessee. Based on these surveys, formerly reported populations in Little Wolf Creek, Whitley County, Kentucky, Gum Fork, Scott County, Tennessee, and the mainstem of the Cumberland River appear to have been extirpated.

The Cumberland Johnny darter inhabits shallow water in low velocity shoals or riffles and backwater areas of moderate to low gradient stream reaches with stable sand or sandy-gravel substrates. Existing populations of Cumberland Johnny darter are small in size and range and are geographically isolated from one another. This patchy distribution makes them more susceptible to extirpation from single events of large impact. It also reduces their ability to recover from smaller impacts to their habitat or population size. This level of isolation makes natural repopulation of any extirpated population impossible without human intervention. Population isolation also inhibits the natural interchange of genetic material between populations; some of the Cumberland Johnny darter populations are likely below the effective population size required to maintain long-term genetic and population viability.

Siltation, primarily from coal mining activities but also from forestry and agricultural activities, road construction, and urban development, appears to be the major factor contributing to the decline of the Cumberland Johnny darter. Federal and State water quality laws have reduced water quality threats to some degree, but non-point pollution threats and modification of instream habitat and hydrology are cumulative and gradual. Consequently, we continue to assign the Cumberland Johnny darter a listing priority number of 6, reflecting a threat magnitude and immediacy of high and nonimminent, respectively.

Pearl darter (*Percina aurora*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Little is known about the specific habitat

requirements of the pearl darter. Pearl darters have been collected from gravel riffles and rock outcrops; deep runs over gravel and sand pools below shallow riffles; swift, shallow water over firm gravel and cobble in mid-river channels; swift water near brush piles and scour holes. The pearl darter is historically known only from localized sites within the Pearl and Pascagoula River drainages in Mississippi and Louisiana. The pearl darter is very rare in the Pascagoula River system and is extinct in the Pearl River system. Since 1983, pearl darters have only been found in scattered sites within the Pascagoula drainage, including the Pascagoula, Chickasawhay, Chunky, Leaf, and Bouie Rivers and Okatoma and Black Creeks, resulting in a 66 percent decrease of range. The pearl darter is vulnerable to nonpoint source pollution, changes in river and stream geomorphology, and other human-induced threats to its environment. The magnitudes of threats to the pearl darter are high based on its limited numbers and distribution. However, we do not consider threats to be imminent at this time. Although the numbers are low and distribution is disjunct, efforts are underway to improve habitat by reducing sedimentation and increase numbers of pearl darters through husbandry. There are no known proposed projects that may result in further habitat degradation at this time. Therefore, we retain a listing priority number of 5 for the pearl darter.

Rush darter (*Etheostoma phytophilum*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The life history of the rush darter is poorly known. Rush darters have been collected in vegetation from very shallow, clear, cool and flowing water. Rush darters appear to prefer relatively low-gradient small streams, not necessarily spring influenced. Historically, rush darters have been found in three distinct watersheds in Alabama: Clear Creek drainage in Winston County; Turkey Creek drainage in Jefferson County; and Little Cove and Bristow Creek in Etowah County. Cumulatively, the rush darter is only known from localized collection sites within approximately 14 km (9 miles) of streams in the mentioned counties.

The rush darter is currently known to have one of the most restricted distributions of any vertebrate in Alabama and all are located above the Fall Line in the Tombigbee-Black Warrior drainage. There are only two known extant rush darter populations: the Clear Creek drainage in Winston

County and the Beaver Creek and Penny Springs areas in the Turkey Creek drainage in Jefferson County. The rush darter is vulnerable to non-point source pollution, urbanization, and changes in stream geomorphology due to its localized distribution in parts of two unconnected stream drainages and its apparent low population sizes. Sedimentation has been identified as the greatest threat to the rush darter. Industrialization is extensive throughout the rush darter's habitat, particularly near the type locality for the rush darter in Jefferson County. Although efforts are underway to improve habitat by reducing sedimentation and increase numbers of rush darters through husbandry, the magnitude of threats to the rush darter are high based on its limited numbers and distribution. We do not consider the threats to be imminent at this time, however, as we know of no proposed projects that may result in further habitat degradation. Therefore, we retain a listing priority number of 5 for the rush darter.

Yellowcheek darter (*Etheostoma moorei*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Yellowcheek darter is endemic to only four headwater tributaries of the Little Red River, Arkansas. It is vulnerable to alterations in physical habitat characteristics such as the impoundment of Greers Ferry Reservoir, channel maintenance in the Archey Fork tributary, increased sedimentation from eroding stream banks and poor riparian management (e.g. livestock grazing in and along tributaries resulting in higher sediment loads), and illegal gravel mining. Factors affecting the remaining populations include loss of suitable breeding habitat, habitat and water quality degradation, population isolation, and severe population declines.

The Middle Fork tributary was listed as an impaired waterbody by the Arkansas Department of Environmental Quality in 2004 due to excessive bacteria and low dissolved oxygen. Recent studies have documented significant declines in the numbers (60,000 in 1981 compared to 10,300 in 2000) of this fish in the remaining populations and further range restriction within the tributaries (130.4 to 65.0 stream km). As a result, yellowcheek darter numbers have declined by 83 percent in both the Middle Fork and South Fork, and by 60 percent in the Archey Fork during the past 20 years. No yellowcheek darters were found in the Devils Fork during a

2000 status survey; the species has apparently been extirpated in that reach. A comparison of inhabited stream reaches in a 1981 survey versus the 2000 survey reveals that the largest decline occurred in the South Fork, where reaches formerly inhabited by the yellowcheek darter declined by 70 percent. The second largest decline occurred in the Archey Fork, where there was a 60 percent reduction in inhabited stream reach. The Middle Fork showed the least decline in inhabited stream reach, at 22 percent. Due to imminent threats of a high magnitude, we retain a listing priority number of 2 for this species.

Fluvial arctic grayling, upper Missouri River DPS (*Thymallus arcticus*)—The following summary is based on information contained in our files and the petition received on October 2, 1992. See also our 12-month petition finding published on July 25, 1994 (59 FR 37738). The distinct vertebrate population segment (DPS) of fluvial Arctic grayling (*Thymallus arcticus*) of the upper Missouri River once ranged throughout the streams and rivers of the upper Missouri River drainage above Great Falls. Currently, the only confirmed fluvial population is restricted to the upper Big Hole River in Montana, an area estimated to be less than 5 percent of the population segment's historical range. Attempts since 1997 to re-establish additional populations in historic waters have not yet produced any self-sustaining populations.

The primary threats facing the fluvial Arctic grayling are hydrologic alterations and stream dewatering from irrigation withdrawals, thermal stress, degradation and loss of riparian habitat, entrainment in irrigation ditches, lack of fish passage, and encroachment by nonnative trout species. Since 1999, persistent drought in southwestern Montana has exacerbated the effects of these primary threats, and corresponding survey data do not suggest a secure fluvial Arctic population in the Big Hole River. Consequently, we elevated the listing priority for fluvial Arctic grayling from a 9 to a 3 in the 2003 CNOR.

In May 2004, stream flows in the upper Big Hole River reached critically low levels because of early snowmelt runoff and irrigation withdrawals. On May 18, 2004, the Center for Biodiversity (CBD) sent a letter to us requesting we emergency list the grayling based on the "critical situation" caused by low streamflows. Federal agencies, State agencies, and private landowners addressed the low streamflows with a collaborative effort

to improve flows by withdrawing land from irrigation and installing off-stream livestock watering facilities. Timely precipitation, supplemented by the above voluntary conservation actions, helped maintain discharge above minimum "survival" levels for fluvial Arctic grayling in the upper Big Hole River through the remainder of 2004, so the "critical situation" cited in CBD's emergency listing request did not persist. Fluvial Arctic grayling persist at low abundance in the Big Hole River and a number of associated tributary streams, and recent spawning success observed in 2003–04 is consistent with a functional, albeit depressed, population. Thus, emergency listing is not warranted at this time (see also the 2003 CNOR published on May 4, 2004, for our determination that emergency listing was not warranted at that time); however, a listing priority of 3 continues to be warranted because the threats facing the DPS remain high in magnitude and imminent. We are closely monitoring the status of this DPS and ongoing efforts to secure the Big Hole River population and expand its range into historic waters in the upper Missouri River basin.

Chucky madtom (*Noturus sp. cf. N. elegans*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The chucky madtom is a rare, undescribed catfish known from only 14 specimens collected from two Tennessee streams. A lone individual was collected in 1940 from Dunn Creek (a Little Pigeon River tributary) in Sevier County, and 13 specimens have been encountered since 1991 in Little Chucky Creek (a Nolichucky River tributary) in Greene County. Only 3 specimens have been encountered since 1994 from two riffle areas in a short reach of Little Chucky Creek. All Little Chucky Creek specimens have been collected from stream runs with slow to moderate current over pea gravel, cobble, or slab-rock substrates.

The majority of the Little Chucky Creek watershed is privately owned and managed for beef cattle production, tobacco cultivation, and row crops, especially corn and soybeans. The Dunn Creek watershed shares these same agricultural practices. Nonpoint source sediment and agrochemical inputs from local agricultural and other sources may adversely affect the chucky madtom by altering the physical characteristics of its habitat, thus potentially impeding its ability to feed, seek shelter from predators, and successfully reproduce. The Service believes that potential demographic effects of inbreeding,

restricted distribution, and low number of individuals pose imminent threats to the chunky madtom in its only known extant and historic locations. We are retaining a listing priority number of 2 for the chunky madtom.

Grotto sculpin (*Cottus* sp., sp. nov.)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Grotto sculpin is a small fish within the banded sculpin taxonomic complex that exhibits cave-adapted features, including nearly nonfunctional eyes, reduced skin pigmentation, and smaller optic nerves. The species inhabits pools and riffles within cave systems in two karst (cave) areas in Perry County, Missouri. Only a few thousand individuals are thought to exist. The species is threatened by water quality contamination as a result of point and nonpoint pollution sources. A large die-off of all Grotto sculpins in one of the five known occupied cave systems known to have the species was likely a result of pollution. The species is also threatened by predatory fish that likely prey upon Grotto sculpin and are known from all locations occupied by the species. These predators, normally excluded from cave environments, escape surface farm ponds that unexpectedly drain through sinkholes into the underground cave systems and enter grotto sculpin habitat. Currently no State or Federal regulations provide protection for the Grotto sculpin. Due to imminent threats of a high magnitude, a listing priority number of 2 remains appropriate for this species.

Sharpnose shiner (*Notropis oxyrhynchus*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The sharpnose shiner is a small, slender minnow, endemic to the Brazos River Basin in Texas. Historically, the sharpnose shiner existed throughout the Brazos River and several of its major tributaries within the watershed. Current information indicates that the population within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable, while the population within the Middle and Lower Brazos River Basins may only exist in remnant areas of suitable habitat, or may be completely extirpated, representing a reduction of approximately 64 percent of its historical range.

The most significant threat to the existence of the sharpnose shiner is the modification of its habitat by reservoir construction, irrigation and water diversion, sedimentation, industrial and

municipal discharges, and agricultural activities. The current limited distribution of the sharpnose shiner within the Upper Brazos River Basin makes it vulnerable to events such as the introduction of competitive species or prolonged drought. Other possible threats include toxins released by blooms of golden algae, and sand and gravel operations in the Lower Brazos River. The effects of these last two possible threats may be insignificant, but further information is necessary before ruling them out as threats to this species. State law does not provide protection for the sharpnose shiner. Because the threats are nonimminent but of a high magnitude, a listing priority number of 5 remains appropriate for this species.

Smalleye shiner (*Notropis buccula*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The smalleye shiner is a small, pallid minnow endemic to the Brazos River Basin in Texas. The population of smalleye shiners within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable. However, the shiner has not been collected since 1976 downstream from the reservoir, and in all likelihood the species is completely extirpated from this area, representing a reduction of approximately 64 percent of its historical range. The most significant threat to the existence of the smalleye shiner is the modification of its habitat by reservoir construction, irrigation and water diversion, sedimentation, industrial and municipal discharges, and agricultural activities. Because these threats continue to be nonimminent and of a high magnitude, we retain a listing priority number of 5 for this species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The range of the Zuni bluehead sucker has been reduced by over 90 percent. The Zuni bluehead sucker currently occupies 9 river miles in 4 areas of New Mexico, and approximately 6 miles in one stream of Arizona. Zuni bluehead sucker range reduction and fragmentation is caused by discontinuous surface water flow, separation of inhabited reaches by reservoirs, and habitat degradation from fine sediment deposition. The principal uses of surface and ground water within the Zuni River watershed are human consumption, livestock, and irrigation.

Diverting water for agricultural use is the primary purpose of at least five impoundments, and several other reservoirs act as flood-control structures. Degradation of the upper watershed has led to increased sedimentation, and many of the reservoirs are now only shallow, eutrophic ponds or wetlands with little or no storage capacity. The impoundments have also changed the downstream channel morphology and substrate composition of streams. Another major impact to populations of Zuni bluehead sucker was the application of fish toxicants through at least two dozen treatments in the Nutria and Pescado Rivers between 1960 and 1975. Large numbers of Zuni bluehead suckers were killed during these treatments.

For several years, the New Mexico Department of Game and Fish (NMDGF) has been the lead agency to develop a conservation plan for Zuni bluehead sucker. A study funded through section 6 of the ESA was initiated in 2000, and will continue through 2005. The grant includes funding for development and implementation of a Zuni Bluehead Sucker Conservation Plan and the acquisition of additional information on distribution, life history, and species associations. A draft conservation plan was completed in 2004, but the plan is not yet final. At this time, the potential cooperators for the conservation effort are the Silva Family, Zuni Pueblo, U.S. Forest Service, The Nature Conservancy, NMDGF, and U.S. Fish and Wildlife Service. Because of the loss of habitat, degradation of remaining habitat, and ongoing threats (*i.e.*, drought and fire), we continue to assign this subspecies a listing priority number of 3.

Clams

Texas hornshell (*Popenaias popei*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Historically, Texas hornshell, a freshwater mussel, occurred in the lower Pecos River of New Mexico, downstream throughout the Lower Rio Grande (Brownsville, Texas) and major tributaries in Texas, southward to the Rio Pánuco drainage of San Luis Potosí, Mexico. Texas hornshell has declined notably throughout its historic range and can only be confirmed as extant in the Black River of New Mexico and, possibly, the Big Bend reach of the Rio Grande in Texas. The primary threats are ongoing habitat alterations such as stream bank channelization, impoundments, and diversions for agriculture and flood control;

contamination of water from the oil and gas industry; alterations in the natural riverine hydrology; and increased sedimentation from prolonged overgrazing and loss of native vegetation. Thus, a listing priority number of 2 remains appropriate for the Texas hornshell.

Fluted kidneyshell (*Ptychobranhus subtentum*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The fluted kidneyshell is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors contributing to its decline. This species has been extirpated from numerous regional streams and is no longer found in the State of Alabama. The fluted kidneyshell was historically known from at least 37 streams but is currently restricted to no more than 14 isolated stream segments, of which only 1 (upper Clinch River) appears to be stable and viable. Although the threats faced by this species are significant, we do not anticipate that they will eliminate the species in the immediate future (next 1–3 years). Because the threats are high in magnitude and nonimminent at this time, we retain a listing priority number of 5 for this mussel.

Neosho mucket (*Lampsilis rafinesqueana*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Neosho mucket is a freshwater mussel native to Arkansas, Kansas, Missouri, and Oklahoma. The species has been extirpated from approximately 70 percent of its range, and very low or no recruitment is occurring in all of the extant populations. Most of this extirpation has occurred in Kansas and Oklahoma. The Neosho mucket survives in four river drainages; however, only two of these, the Spring and Illinois Rivers, currently support relatively large numbers of individuals and thus might be self-sustaining populations. Range restriction and population declines have occurred in the past due to habitat degradation attributed to impoundments, mining, sedimentation, and agricultural pollutants. These threats have led to the species being intrinsically vulnerable to extirpation.

Although State regulations limit harvest of this species, there is little protection for habitat. However, populations are stable in the Illinois River despite rapid urbanization and development within the watershed. Due to nonimminent threats of a high magnitude, we retain a listing priority number of 5 for this species.

Alabama pearlshell (*Margaritifera marrianae*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Alabama pearlshell inhabits shallow riffles and pool margins of small creeks and streams of southwest Alabama. Only three populations of Alabama pearlshell have been confirmed to survive during the past 15 years. The species has not been found at one of these sites since 1998; observations of increased sedimentation at this location suggest nonpoint source pollution may be implicated in the disappearance of Alabama pearlshell from this stream. The other two populations appear to be stable and recruiting. We continue to assign the Alabama pearlshell a listing priority number of 2, due to the vulnerability of small stream habitat to nonpoint source pollution, and the decline or loss of one of three known populations.

Slabside pearlymussel (*Lexingtonia dolabelloides*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The slabside pearlymussel is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors contributing to its decline. This species has been extirpated from numerous regional streams and is no longer found in the State of Kentucky. The slabside pearlymussel was historically known from at least 32 streams but is currently restricted to no more than 9 isolated stream segments. Only 3 populations appear to be significant and viable (Middle Fork Holston River, Paint Rock River system, and Duck River within the Tennessee River system). Although the threats faced by this species are significant, we do not anticipate that they will eliminate the species in the immediate future (next 1–3 years). We continue to assign a listing priority number of 5 to this mussel due to

nonimminent threats of a high magnitude.

Georgia pigtoe (*Pleurobema hanleyanum*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Altamaha spiny mussel (*Elliptio spinosa*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Altamaha spiny mussel is a freshwater mussel endemic to the Altamaha River drainage of southeastern Georgia. The historical range of the Altamaha spiny mussel was restricted to the Coastal Plain portion of the Altamaha River and the lower portions of its three major tributaries, the Ochopee, Ocmulgee, and Oconee Rivers. The Altamaha River is formed by the confluence of the Ocmulgee and Oconee rivers and lies entirely within the State of Georgia.

Comprehensive surveys revealed that only 14 live spiny mussels have been found and only from an isolated portion of their range, limited to a half mile reach of the Altamaha River. The species appears to be extirpated from the Ochopee, Ocmulgee, and Oconee Rivers, and its numbers are greatly reduced in the Altamaha River. Altamaha spiny mussels face severe habitat degradation from a number of sources. Among these are threats from sedimentation, contaminants (from municipal wastewater treatment plants, agricultural sources, kaolin mining and pulp mills), and the operations of the Edwin I. Hatch Nuclear Power Plant within the rivers that the Altamaha spiny mussel inhabits. Water withdrawal and drought have intensified the impacts from contaminants, the resulting low-flow rates provide lower volumes of water to dilute potential contaminants and, therefore, effectively increase the concentrations of contaminants in streams. In 1990, the total amount of surface water withdrawn from the Altamaha River basin was 1315.88 MGD, and development pressures continue to grow, which will lead to increased water withdrawals. Prolonged drought has resulted in other negative effects to the Altamaha spiny mussel. For instance, the drought has opened the stream beds to all-terrain and four-wheel drive vehicle access, so mussels that might have survived the drought are now in danger of being crushed by heavy vehicular traffic in the river bed itself. These threats to the Altamaha

spiny mussel are further compounded by its limited distribution and the low populations sizes identified in recent survey efforts. However, the immediacy of these threats is not imminent. The Altamaha River Cooperative for Stewardship and Research has been formed with the main objective of identifying critical research and conservation needs in the lower Altamaha Basin with a particular emphasis on relationships between forestry practices and native biological diversity. The Cooperative is comprised of representatives from Plum Creek, International Paper, The Nature Conservancy, and the Georgia Dept. of Natural Resources. Other stakeholders including other industrial forestry companies, Georgia Power, paper mills and university researchers have also participated in the Cooperative, but are not formal members. As part of the agreement the Altamaha River Scenic Easement was established with industry representatives to the Cooperative contributing funds to support research and conservation activities in the lower Altamaha Basin. The Altamaha River Scenic Easement is a 91.4 m (300-ft) wide buffer strip along 45 km (28 mi) of the Altamaha River proper comprised of several non-contiguous parcels, most of which occur on one but not both sides of the river. The easement protects over 480 hectares (1200 acres) of river shoreline and floodplain from development, surface mining, and logging activities. Based on consideration of all of these conditions, we continue to assign a listing priority of 5 to this mussel based on nonimminent threats of a high magnitude.

Snails

Ogden mountainsnail (*Oreohelix peripherica wasatchensis*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Ogden mountain snail is known from a single population near the mouth of Ogden Canyon, Weber County, Utah. The total occupied habitat is an area approximating 100 meters (328 ft wide by 1 kilometer (0.5 miles) long. The last population estimates were taken in 1999, when snail numbers ranged from approximately 9,520 in fall to 18,724 in the spring. Based on measurement of snail size, there appears to be little recruitment to the population. Threats to the colony have not substantially changed or increased over the past year. The habitat receives heavy recreational use and utility roads and ORV trails are significant barriers to dispersal and

interconnection among subpopulations. Based on moderate, nonimminent threats, we retain a listing priority number of 9 for this subspecies.

Bonneville pondsnail (*Stagnicola bonnevillensis*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Interrupted rocksnail (*Leptoxis foremani* (= *downei*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Sisi snail (*Ostodes strigatus*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Belonging to the snail family, Potaridae, the sisi snail is a ground-dwelling species and endemic to American Samoa. The species is now known only from a single population on the island of Tutuila, American Samoa. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Diamond Y Spring snail (*Pseudotryonia adamantina*) and Gonzales springsnail (*Tryonia circumstriata*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Diamond Y Spring snail and Gonzales springsnail are small aquatic snails endemic to Diamond Y Spring in Pecos County, Texas. The spring and its outflow channel are owned and managed by The Nature Conservancy. These snails are primarily threatened with habitat loss due to springflow declines from drought and from pumping of groundwater. Additional threats include the possibility of water contamination from accidental releases of petroleum products, as their habitat is in an active oil and gas field. Also, a nonnative aquatic snail (*Melanoides* sp.) was recently introduced into the native snails' habitat and may compete with endemic snails for space and resources. With imminent threats of high magnitude, we retain a listing priority number of 2 for this species.

Fragile tree snail (*Samoana fragilis*)—The following summary is based on information contained in our files. No

new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the fragile tree snail belongs to the snail family, Partulidae, and is endemic to the islands of Guam and Rota (Mariana Islands). Requiring cool and shaded native forest habitat, the species is now known only from a single population on Rota. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats are of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Gonzales springsnail (*Tryonia circumstriata*)—See paragraph above under Diamond Y Spring snail (*Pseudotryonia adamantina*).

Guam tree snail (*Partula radiolata*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the Guam tree snail belongs to the snail family, Partulidae, and is endemic to the island of Guam. Requiring cool and shaded native forest habitat, the species is now known only from eleven populations on Guam. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Humped tree snail (*Partula gibba*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the humped tree snail belongs to the snail family, Partulidae, and was originally known from the island of Guam and the Commonwealth of the Northern Mariana Islands (islands of Rota, Aguijan, Tinian, Saipan, Anatahan, Sarigan, Alamagan, and Pagan). Most recent surveys revealed a total of 28 populations on the islands of Guam, Rota, Aguijan, Tinian, Anatahan, Sarigan, Alamagan, and Pagan. Although still the most widely-distributed tree snail endemic in the Mariana Islands, most of the remaining populations are small. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats are of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Lanai tree snail (*Partulina semicarinata*)—The following summary is based on information contained in our files. No new information was

provided in the petition received on May 11, 2004. A tree-dwelling species, *Partulina semicarinata* belongs to the snail family, Achatinellidae. Endemic to the island of Lanai, the species is currently known from 12 populations. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats are of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Lanai tree snail (*Partulina variabilis*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, *Partulina variabilis* belongs to the snail family, Achatinellidae. Endemic to the island of Lanai, the species is currently known from 16 populations. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats are of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Langford's tree snail (*Partula langfordi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, Langford's tree snail belongs to the snail family, Partulidae, and is known from one population on the island of Aguijan. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats are of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Phantom Cave snail (*Cochliopa texana*) and Phantom springsnail (*Tryonia cheatum*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Phantom Cave snail and Phantom springsnail are small aquatic snails that occur in only three spring outflows in the Toyah Basin in Reeves and Jeff Davis Counties, Texas. The primary threat to both species is the loss of surface flows due to declining groundwater levels from drought and pumping for agricultural production. Although the land surrounding their habitat is owned and managed by The Nature Conservancy, Bureau of Reclamation, and Texas Parks and Wildlife Department, the water needed to maintain the habitat of both species has declined due to a reduction in the spring flows, possibly as a result of private groundwater pumping in areas

beyond that controlled by these landowners. As an example, Phantom Lake Spring is undergoing drying and declining spring flows in San Solomon Spring are also becoming evident (both of these springs are sites of occurrence for these springsnails). Since these threats continue to be imminent and of a high magnitude, we retain a priority listing number of 2 for these species.

Tutuila tree snail (*Eua zebrina*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the Tutuila tree snail belongs to the snail family, Partulidae, and is endemic to American Samoa. The species is now known only from two populations on the island of Tutuila. This species is currently threatened by habitat loss and modification and by predation from nonnative snails. Because the threats are of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Chupadera springsnail (*Pyrgulopsis chupaderae*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. See also our 12-month petition finding published on October 4, 1988 (53 FR 38969). This aquatic species is endemic to Willow Spring on the Willow Spring Ranch (formerly Cienega Ranch) at the south end of the Chupadera Mountains in Socorro County, New Mexico. The Chupadera springsnail has been documented from two hillside groundwater discharges that flow through grazed areas among rhyolitic gravels containing sand, mud, and hydrophytic plants. Regional and local groundwater depletion, springrun dewatering, and riparian habitat degradation represent the principal threats. The survival and recovery of the Chupadera springsnail is contingent upon protection of the riparian corridor immediately adjacent to Willow Spring and the availability of perennial, oxygenated flowing water within the species' thermal range. Due to several factors including the extremely localized distribution of the snail, its occurrence only on private property, the lack of regulatory protection of its habitat, and the inability of land managers to participate in its management, the magnitude of the threats to this species is high. There is an imminent threat to this species because either human-caused disturbance (grazing of cattle, water withdrawal, and fire) or natural disturbance (drought or fire) could eliminate this species in the near future.

Therefore, due to the continuing magnitude and imminence of threats to this species, we retain a listing priority number of 2 for this species.

Elongate mud meadows springsnail (*Pyrgulopsis notidicola*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Pyrgulopsis notidicola* is endemic to Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert, in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province, Humboldt County, Nevada. The type locality, and the only known location of the species, occurs in a stretch of thermal (between 45° Celsius (C) (113° Fahrenheit (F)) and 32° C (90° F)) aquatic habitat that is approximately 300 m (984 ft) long and 2 m (6.7 ft) wide. *Pyrgulopsis notidicola* occurs only in shallow, flowing water on gravel substrate. The species does not occur in deep water (*i.e.*, impoundments) where water velocity is low, gravel substrate is absent, and sediment levels are high. The present or threatened destruction, modification, or curtailment of its habitat or range by recreational bathers in the thermal waters is the greatest threat to the species. The small size of their habitat and their limited range makes them highly susceptible to any factors that negatively impact their habitat. Regulatory mechanisms are beginning to be put in place, but few actions have been implemented to date. Based on imminent threats of high magnitude, we retain a listing priority number of 2 for this species.

Gila springsnail (*Pyrgulopsis gilae*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. Also see our 12-month petition finding published on October 4, 1988 (53 FR 38969). The Gila springsnail is an aquatic species known from 13 populations in New Mexico. The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats (habitat at the springhead and along the watercourse running from the springhead), thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. Sites on both private and Federal lands are subject to levels of recreational use and livestock grazing that negatively affect this species, thus placing the longterm survival of the Gila springsnail at risk. Natural events such as drought, forest

fire, sedimentation, and flooding; wetland habitat degradation by recreational bathing in thermal springs; and poor watershed management practices represent the primary threats to the Gila springsnail. Fire suppression activities and fire retardant chemicals have potentially deleterious effects on this species. Because several of the springs occur on Forest Service land, management options for the protection of the snail should be possible. However, randomly occurring events, especially fire and drought, could have a major impact on the species. Moderate use by recreationalists and livestock is ongoing. If these uses remain at current or lower levels, they will not pose an imminent threat to the species. Of greater concern is the current drought that could impact spring discharge and which increases the potential for fire. Significant fires have occurred in the Gila National Forest, and subsequent floods and ash flows have severely impacted aquatic life in streams. If the drought continues or worsens, the imminence of threat (decreased discharge, fire) will increase. Based on these nonimminent threats that are currently of a low magnitude, we retain a listing priority number of 11 for this species.

Huachuca springsnail (*Pyrgulopsis thompsoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Huachuca springsnail inhabits 13 springs and cienegas at elevations of 4,500 to 7,200 feet in southeastern Arizona (11 sites) and adjacent portions of Sonora, Mexico (2 sites). The springsnail is typically found in the shallower areas of springs or cienegas, often in rocky seeps at the spring source. Potential threats include habitat modification, wildfire, cattle grazing, and groundwater pumping. Recent communication with personnel from Fort Huachuca indicates they are in the process of evaluating the status of species on Department of Defense lands and developing conservation strategies; this may result in a reduction or elimination of threats in the future. Currently, however, due to the high magnitude and nonimminent threats, we continue to assign a listing priority number of 5 for this species.

New Mexico springsnail (*Pyrgulopsis thermalis*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. Also see our 12-month petition finding published on October 4, 1988 (53 FR 38969). The New Mexico springsnail is an aquatic species known from only two separate

populations associated with a series of spring-brook systems along the Gila River in the Gila National Forest in Grant County, New Mexico. The longterm persistence of the New Mexico springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats, thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range.

While the New Mexico springsnail populations may be stable, the sites inhabited by the species are subject to levels of recreational use and livestock grazing that negatively affect this species. Wetland habitat degradation by recreational use and overgrazing in or near the thermal springs and/or inadequate watershed management practices represent the primary threats to the New Mexico springsnail. Moderate use by recreationalists and livestock is ongoing. If these uses remain at the current or lower levels, they will not pose an imminent threat to the species. Of greater concern is the current drought, which could impact spring discharge and increases the potential for fire. Significant fires have occurred in the Gila National Forest and subsequent floods and ash flows have severely impacted aquatic life in streams. If the drought continues or worsens, the imminence of threat (decreased discharge, fire) will increase. Based on these nonimminent threats of a low magnitude, we retain a listing priority number of 11 for this springsnail.

Page springsnail (*Pyrgulopsis morrisoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Page springsnail is known to exist only within a complex of springs located within an approximately 1.5-kilometer (0.93-mile) stretch along the west side of Oak Creek around the community of Page Springs, Yavapai County, Arizona. Many of the springs where the springsnail occurs have been subjected to some level of modification for domestic, agricultural, ranching, fish hatchery, and recreational activities. Arizona Game and Fish Department (AGFD) management plans for the Bubbling Ponds and Page Springs fish hatcheries include commitments to replace lost habitat and to monitor remaining populations of invertebrates such as the Page springsnail. Based on recent survey data, it appears that the Page springsnail is abundant within its habitats and is more widely distributed than previously known. Monitoring by AGFD and Service biologists no longer

entails snail removal, which appears to have had a temporary positive impact on population numbers. The threat of ground water withdrawal is not considered imminent because recent studies indicate that the groundwater system of the Verde Valley has not yet been affected by development, and base flow in the Verde River Valley has remained virtually unchanged since 1915. Because these threats are nonimminent but continue to be of a high magnitude, we retain a listing priority number of 5 for this species.

Three Forks springsnail (*Pyrgulopsis trivialis*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Three Forks springsnail is an endemic species with distribution limited to the Three Forks Springs and Boneyard Springs spring complexes in the North Fork East Fork Black River Watershed of east-central Arizona. The springsnail is known from free-flowing spring heads, concrete boxed spring heads, spring runs, and spring seepage at these sites. The primary threats include habitat modification from recreational activities, damage from elk wallowing, and predation from nonnative crayfish. The Arizona Game and Fish Department currently maintains an active monitoring program for the Three Forks springsnail in cooperation with the Fish and Wildlife Service and Forest Service. This program includes population monitoring, habitat sampling, and removal of nonnative predatory crayfish. However, in the absence of a management strategy to effectively address the threat from both elk and crayfish in a longterm fashion, we believe the immediacy of threats to be imminent. Therefore, we retain a listing priority number of 2 for the Three Forks springsnail.

Newcomb's tree snail (*Newcombia cumingi*)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Insects

Warm Springs Zaitzevian riffle beetle (*COM044Zaitzevia thermae*)**—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Warm Springs Zaitzevian riffle beetle is a small, flightless beetle. It is globally endemic to a single, small warm spring along a creek in southwestern Montana. A concrete box has been constructed to protect the spring from contaminants

that may enter the adjacent creek. As a result, the beetle habitat is protected from contamination or trampling, although the possibility for breaching of the cement box exists if extreme events were to occur. The most recent survey indicates the beetle is abundant both within the cement box and in seeps outside the box. Because of its naturally limited distribution, the species is vulnerable to randomly occurring natural and human-caused events. However, because of the protection of the habitat, the magnitude of threats is low and threats are nonimminent, resulting in our retention of a listing priority number of 11 for this species.

Wekiu bug (*Nysius wekiuicola*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Wekiu bug belongs to the true bug family, Lygaeidae, and is endemic to the island of Hawaii. Originally and currently known from one widespread population on the summit of Mauna Kea, the species feeds upon other insect species that are blown to the summit of this large volcano. This species is currently threatened by competition with and predation by nonnative arthropods, impacts from recreational and astronomy activities on the summit, and loss of habitat from astronomy development. Because the threats are of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Mariana eight spot butterfly (*Hypolimnas octocula mariannensis*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Mariana eight spot butterfly is a nymphalid butterfly species which feeds upon two host plants, *Procris pedunculata* and *Elatostema calcareum*. Endemic to the island of Guam and the Mariana Islands, the species is now known from ten populations on Guam. This species is currently threatened by predation and parasitism from nonnative species and impacts to its host plants by browsing ungulates. Because the threats are of a high magnitude and are considered imminent, we retain a listing priority number of 3 for this subspecies.

Mariana wandering butterfly (*Vagrans egestina*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Mariana wandering butterfly is a nymphalid butterfly species which feeds upon a single host plant species, *Maytenus thompsonii*. Originally known

from and endemic to the islands of Guam and Rota (of the Mariana Islands), the species is now known only from one population on Rota. This species is currently threatened by predation and parasitism from nonnative species, and impacts to its host plants by browsing ungulates. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Miami blue butterfly (*Cyclargus thomasi bethunebakeri*)—See above in “Summary of New Candidates.” The above summary is based on information contained in our files and in the petition received on June 15, 2000.

Sequatchie caddisfly (*Glyphopsyche sequatchie*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Sequatchie caddisfly is known from two spring runs that emerge from caves in Marion County, Tennessee: Owen Spring Branch (the type locality) and Martin Spring run in the Battle Creek system. The Owen Spring Branch population occurs within Sequatchie Cave Park, which is a Class II Natural-Scientific State Natural Area, thus providing statutory protection from collection for the population in Owen Spring Branch. Estimated population sizes are 500 to 5000 individuals for Owen Spring Branch and 2 to 10 times higher at Martin Spring, due to the greater amount of apparently suitable habitat. Threats to the species include siltation; agricultural, municipal, and industrial chemical runoff (both direct and from subsurface flows); vandalism, and pollution from trash thrown into the springs. This species is vulnerable to extinction due to its restricted distribution and small population sizes. These threats are gradual and/or not necessarily imminent but are of a high magnitude; therefore, we retain a listing priority number of 5 for this species.

Inquirer cave beetle (*Pseudanophthalmus inquistor* Barr), **Beaver cave beetle (*Pseudanophthalmus major* Krekeler)**, **Tatum Cave beetle (*Pseudanophthalmus parvus* Krekeler)**, and **Louisville cave beetle (*Pseudanophthalmus troglodytes* Krekeler)**—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Cave beetles in the genus *Pseudanophthalmus* are fairly small, eyeless, reddish-brown insects. The limestone caves in which these cave beetles are found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the

demanding conditions found in cave ecosystems.

The inquirer cave beetle was described in 1980, from specimens collected in Sheals’s Cave, Clay County, Tennessee. The species is not known from any other caves. During a 1997 survey of the cave, three inquirer cave beetles were observed. The Beaver Cave beetle was described in 1973, from 3 specimens collected from Beaver Cave, Harrison County, Kentucky. No additional caves that could provide habitat for the Beaver Cave beetle were found during a 1996 survey of Beaver Cave and the surrounding area. One specimen of the species was observed in Beaver Cave during the 1996 survey. The Tatum Cave beetle was described in 1973 from material collected from Tatum Cave, Marion County, Kentucky. No individuals were observed during surveys in 1980 and in 1996. The species has not been observed in Tatum Cave since 1965. There are no other known caves in the vicinity of Tatum Cave that could support the species. The Louisville cave beetle was described in 1973 from specimens collected from Oxmoor Cave, Jefferson County, Kentucky. During 1994, surveys of other caves that could potentially support the species were conducted and the species was found in only one additional cave (Eleven Jones Cave).

All of these cave beetles are currently known from only one or two caves. Their limited distributions make them vulnerable to isolated events that would only have a minimal effect on the more wide-ranging members of the genus. Events such as toxic chemical spills, discharges of large amounts of polluted water, closure of entrances, alteration of entrances, or the creation of new entrances can have serious adverse impacts on these cave beetles and could result in their extinction. No formal protection is currently provided to these species. The threats faced by these species are significant; however, it is not anticipated that they will be subject to these threats in the immediate future (next 1–2 years). Therefore, we retain a listing priority of 5 for these cave beetles.

Clifton Cave beetle (*Pseudanophthalmus caecus* Krekeler), **Lesser Adams Cave beetle (*Pseudanophthalmus cataryctos* Krekeler)**, **Greater Adams Cave beetle (*Pseudanophthalmus pholeter* Krekeler)**, and **Icebox Cave beetle (*Pseudanophthalmus frigidus* Barr)**—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Cave beetles in the genus

Pseudanophthalmus are fairly small, eyeless, reddish-brown insects. The limestone caves in which these cave beetles are found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems.

The Clifton Cave beetle was described in 1973 by Krekeler based upon material collected in 1963. The cave supporting this species is near Versailles, Woodford County, Kentucky. Soon after the species was first collected, the entrance to the cave was enclosed due to road construction. Other caves in the vicinity of Clifton Cave were surveyed for the species in 1995–1996. Most contained other species of *Pseudanophthalmus*, but only one additional site was found for the Clifton Cave beetle. Four specimens were found in a very small, 30 foot (9 meters) long cave about 1 mile (1.61 kilometers) from Clifton Cave. It can not be determined at this time if the species still occurs in Clifton Cave or if the species has been extirpated from its type locality by the closure of the cave entrance.

The Lesser Adams Cave beetle was described in 1973 based upon material collected from Adams Cave, Madison County, Kentucky. This cave also supports the Greater Adams Cave beetle, which also was described in 1973. During a 1995 visit to the cave, one of the original collectors observed one specimen of the Lesser Adams Cave beetle, but the Greater Adams Cave beetle was not observed. In 2002, one lesser Adams Cave beetle and two greater Adams Cave beetles were found during a biological survey conducted by the Service and the Kentucky State Nature Preserves Commission. There are no other caves in the vicinity of Adams Cave, and this species has not been found at any other locations. A gate to control access to the cave was constructed in 2002. On March 1, 2005, a Candidate Conservation Agreement was signed which will provide for long-term protection for Adams Cave and the species that depend upon it.

Icebox Cave beetle was described in 1981 based upon two specimens collected from Icebox Cave, Bell County, Kentucky. Despite searches of caves in the vicinity of this cave and several later visits to Icebox Cave, no additional specimens of Icebox Cave beetle have been found.

All of these cave beetles are currently known from only one or two caves. Their limited distributions make them vulnerable to isolated events that would only have a minimal effect on the more wide-ranging members of the genus.

Events such as toxic chemical spills, discharges of large amounts of polluted water, closure of entrances, alteration of entrances, or the creation of new entrances can have serious adverse impacts on these cave beetles and could result in their extinction. No formal protection is currently provided to these species. The threats faced by these species are significant; however, it is not anticipated that they will be subject to these threats in the immediate future (next 1–2 years). We retain a listing priority number of 5 for these species.

Surprising cave beetle (*Pseudanophthalmus inexpectatus* Barr)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Cave beetles in the genus *Pseudanophthalmus* are fairly small, eyeless, reddish-brown insects. The limestone caves in which these cave beetles are found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The surprising cave beetle was described from specimens collected in the historic section of Mammoth Cave and White Cave, Mammoth Cave National Park (MCNP), Edmonston County, Kentucky. Subsequent to these original discoveries, the species was also found in MCNP's Great Onyx Cave. Recently, an additional population has been discovered in a cave some distance from the previously known sites. Its limited distribution makes this species vulnerable to isolated events that would only have a minimal effect on the more wide-ranging members of the genus. Events such as toxic chemical spills, discharges of large amounts of polluted water, closure of entrances, alteration of entrances, or the creation of new entrances can have serious adverse impacts on this species and could result in its extinction. The magnitude of the threat to the surprising cave beetle is reduced because of its location on Federal land and the formal commitment through a Candidate Conservation Agreement between MCNP and the Service to protect the species. Therefore we retain a listing priority number of 11 for this species.

Taylor's (Whulge, Edith's) checkerspot butterfly (*Euphydryas editha taylori*)—The following summary is based on information from our files and in the petition received on December 11, 2002. Historically, Taylor's checkerspot butterflies were known from 70 locations: 23 in British Columbia, 34 in Washington, and 13 in Oregon. By spring 2004, only 14

populations, with a total of about 2,000 individuals, were known: 12 in Washington and 2 in the Willamette Valley of Oregon. The species may be extirpated in British Columbia. Threats include degradation and destruction of native grasslands through conversion to agriculture; residential development and commercial development; encroachment by nonnative plants; succession from grasslands to native shrubs and trees; and fire. The application of *Bacillus thuringiensis* var. *kurstaki* for Asian gypsy moth control likely contributed to extirpations of the subspecies at three locations in Pierce County, Washington. The magnitude of threats is high because of the extremely small size of remaining populations and reduction in distribution from the historical range. Sizes and locations of the populations shift from year to year. The ecosystem on which this subspecies depends requires annual management to maintain grassland habitat. Threats are imminent because any of the numerous threats could occur at any time. We retain a listing priority number of 3 for Taylor's checkerspot.

Blackline Hawaiian damselfly (*Megalagrion nigrohamatum nigrolineatum*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion nigrohamatum nigrolineatum* is a stream-dwelling damselfly species endemic to the island of Oahu, Hawaii. Once known from throughout Oahu, the species is now restricted to 11 populations within the windward Koolau Mountains. This species is threatened by predation from nonnative aquatic species such as fish and predacious insects and habitat loss through dewatering of streams. Because the threats are of a moderate magnitude and are considered imminent, we retain a listing priority number of 9 for this subspecies.

Crimson Hawaiian damselfly (*Megalagrion leptodemas*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion leptodemas* is a stream-dwelling damselfly species endemic to the island of Oahu, Hawaii. Once known from throughout Oahu, the species is now restricted to four populations. This species is threatened by predation from nonnative aquatic species such as fish and predacious insects, and habitat loss through dewatering of streams. Because the threats continue to be of a high magnitude and are considered

imminent, we retain a listing priority number of 2 for this species.

Flying earwig Hawaiian damselfly (*Megalagrion nesiotes*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion nesiotes* is a terrestrial or semi-terrestrial damselfly species endemic to the islands of Hawaii and Maui, Hawaii. Despite extensive surveys to locate extant populations, the species is now known to be restricted to a single population in windward east Maui. This species is threatened by predation from ants and other nonnative arthropods, and habitat loss due to disturbance by feral ungulates. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Oceanic Hawaiian damselfly (*Megalagrion oceanicum*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion oceanicum* is a stream-dwelling damselfly species endemic to the island of Oahu, Hawaii. Once known from throughout Oahu, the species is now restricted to seven populations within the windward Koolau Mountains. This species is threatened by predation from nonnative aquatic species such as fish and predacious insects, and habitat loss through dewatering of streams. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion xanthomelas* is a stream-dwelling damselfly species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species is now restricted to 16 populations on the islands of Oahu, Molokai, Lanai, and Hawaii. This species is threatened by predation from nonnative aquatic species such as fish and predacious insects and habitat loss through dewatering of streams. Because the threats continue to be of a moderate magnitude and are considered imminent, we retain a listing priority number of 8 for this species.

Pacific Hawaiian damselfly (*Megalagrion pacificum*)—The following summary is based on information contained in our files. No

new information was provided in the petition received on May 11, 2004. *Megalagrion pacificum* is a slow-moving stream-, pool-, and pond-dwelling damselfly species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species is now restricted to seven populations on the islands of Maui and Molokai. This species is threatened by predation from nonnative aquatic species such as fish and predacious insects, and habitat loss through dewatering of streams. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Poolanui gall fly (*Phaeogramma* sp.)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The poolanui gall fly belongs to the fly family, Tephritidae, and forms galls on its host plant, *Bidens cosmoides*, upon which it also breeds and feeds. The fly is endemic to the Hawaiian Island of Kauai, where it is currently known from seven populations. This species is threatened throughout its limited range by the loss and modification of its host plant's habitat through the uncontrolled growth of nonnative plants. Additionally, the species is highly threatened by parasitism by nonnative wasp species. However, threats to the Poolanui gall fly from nonnative weeds and parasitoids are considered nonimminent because they are not ongoing. Because the threats continue to be of a high magnitude and are considered nonimminent, we retain a listing priority number of 5 for this species.

Picture wing fly (*Drosophila attigua*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This picture wing fly belongs to the fly family, Drosophilidae, and feeds and breeds upon a single host plant, *Cheirodendron* sp. The fly is endemic to the Hawaiian Island of Kauai, where it is currently known from two populations. This species is currently threatened by loss and modification of its host plant's habitat by browsing ungulates and through the uncontrolled growth of nonnative plants. Additionally, the species is threatened by predation and parasitism by nonnative insect species. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Picture wing fly (*Drosophila digressa*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This picture wing fly belongs to the fly family, Drosophilidae, and feeds and breeds upon a single host plant, *Charpentiera* sp. The fly is endemic to the island of Hawaii, where it is currently known from three populations. This species is currently threatened by loss and modification of its host plant's habitat by browsing ungulates and through the uncontrolled growth of nonnative plants. Additionally, the species is threatened by predation and parasitism by nonnative insect species. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Stephan's riffle beetle (*Heterelmis stephani*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Stephan's riffle beetle is an endemic riffle beetle found in limited spring environments within the Santa Rita Mountains, Pima County, Arizona. The beetle is known from Bog Spring and Sylvester Spring in Madera Canyon, within the Coronado National Forest. These springs are typical isolated, mid-elevation, permanently saturated, spring-fed aquatic climax communities commonly referred to as ciénegas. Threats are largely from habitat modification. However, because the Forest Service has no current plans to modify remaining habitat, the threats are not imminent. Due to the continued high magnitude of nonimminent threats, we retain a listing priority number of 5 for Stephan's riffle beetle.

Dakota skipper (*Hesperia dacotae*)—The following summary is based on information contained in our files, including information from the petition received on May 12, 2003. The Dakota skipper is a small-to mid-sized butterfly that inhabits high-quality tallgrass and mixed grass prairie in Minnesota, North Dakota, South Dakota, and the provinces of Manitoba and Saskatchewan in Canada. The species is presumed to be extirpated from Iowa and Illinois and from many sites within States with extant locations. The species is threatened by conversion of its native prairie habitat for agricultural purposes, overgrazing, invasive species, gravel mining, and inbreeding. In addition, prairie is converted to shrubland or forest without periodic fire, grazing, or mowing; thus, the species is also threatened at sites where such

disturbance is not allowed. Although the species is listed as threatened by the State of Minnesota, this designation lacks the habitat protections needed for long-term conservation. The species is also listed as endangered by the province of Manitoba. The U.S. Fish and Wildlife Service, other agencies, and private organizations (e.g., The Nature Conservancy) protect and manage some Dakota skipper sites; although proper management is always necessary to ensure its persistence, it is generally secure at these sites. The species is also secure at some sites where private landowners manage native prairie in ways that conserve the Dakota skipper. Therefore, the threats to the species continue to be relatively moderate and generally nonimminent, although some sites are imminently threatened. Therefore, we retain a listing priority number of 11 for this species.

Mardon skipper (*Polites mardon*)—The following summary is based on information contained in our files and the petition received on December 24, 2002. The Mardon skipper is a northwestern butterfly with a disjunct range. Currently, this species is known from four widely separated locations: south Puget Sound region, southern Washington Cascades, Siskiyou Mountains of southern Oregon, and coastal California. The Mardon skipper spends its entire life cycle in one location, and its dispersal ability is probably limited. Threats include habitat loss and degradation due to development, overgrazing, use of herbicides and pesticides, encroachment of nonnative and native vegetation, succession from grassland to forest, fire suppression; direct loss of individuals due to fire; recreational activities; insect collecting; and random, naturally occurring events. Limited dispersal ability limits the likelihood of recolonization once a population is lost. The magnitude of threats is high because of the small population sizes and disjunct distributions that limit dispersal. Loss of any of the populations could threaten the continued existence of the species. Threats are nonimminent because the number of documented locations for the species has increased from less than 10 in 1998 to greater than 50 rangewide in 2004. However, only 10 locations have more than 50 individuals. We retain a listing priority number of 5 for the Mardon skipper.

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*)—The following summary is based on information contained in our files, including information from the petition received on April 21, 1994. The Coral Pink Sand Dunes tiger beetle is known

to occur only at Coral Pink Sand Dunes, about 7 miles west of Kanab, Kane County, in south-central Utah. It is restricted mostly to a small part of the approximately 13-kilometer (8-mile) long dune field, situated at an elevation of about 1,820 m (6,000 ft). The beetle's habitat is being adversely affected by ongoing recreational off-road vehicle (ORV) use. The ORV activity is destroying and degrading the beetle's habitat, especially the interdunal swales used by the larval population. Having the greatest abundance of suitable prey species, the interdunal swales are the most biologically productive areas in this ecosystem. The continued survival of the beetle depends on the preservation of its habitat at its only breeding site and probably requires the establishment or reestablishment of additional reproductive subpopulations in other suitable habitat sites. The beetle's population is also vulnerable to overcollecting by professional and hobby tiger beetle collectors, although quantification of this threat is difficult without continuous monitoring of the beetle's population. The recreational ORV use threat is currently managed by active measures taken by both the Utah Department of Parks and Recreation and the BLM, which reduces the threat from high to moderate. The subspecies population is still at low levels and has only recently improved. Based on continued imminent threats of a low to moderate magnitude, we retain a listing priority number of 9 for this subspecies.

Highlands tiger beetle (*Cicindela highlandensis*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This is a small, relatively plain tiger beetle. It is narrowly distributed and is restricted to areas of bare sand within upland oak scrub and longleaf pine vegetation on the ancient sand dunes of the Lake Wales Ridge in Polk and Highlands Counties, Florida. The Highlands tiger beetle has been found at 40 sites from near Haines City south to Josephine Creek. It is found near (and possibly in) the Snell Creek unit of Lake Wales Ridge National Wildlife Refuge (LWRNWR), in the Allen David Broussard Catfish Creek Preserve (Florida State Parks), The Nature Conservancy's Tiger Creek Preserve, the Lake Wales Ridge State Forest's Walk-in-Water tract Lake Weohyakapka and the west side of Lake Arbuckle (Lake Wales Ridge State Forest), Carter Creek (Lake Wales Ridge Wildlife and Environmental Area, Florida Fish and Wildlife Conservation Commission), the Flamingo Villas tract of LWRNWR, to

the vicinity of Josephine Creek (tracts managed by the Southwest Florida Water Management District and the Lake Wales Ridge Wildlife and Environmental Area). A large portion of the good Highlands tiger beetle sites are protected and managers are implementing prescribed fire programs that should restore tiger beetle habitat in some areas. Lack of fire to create open sand is a serious threat to this species. Because this is a very narrowly distributed species with exacting habitat requirements and small populations, the magnitude of threats continues to be high. Therefore, we retain a listing priority number of 5 for the Highlands tiger beetle.

Arachnids

Warton's cave meshweaver (*Cicurina wartoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Warton's cave meshweaver occurs in one cave in northeastern Travis County, Texas. Competition and predation from imported red fire ants, runoff from roads and homesites, and unauthorized human activities are the primary threats to this karst invertebrate. These activities are imminent because they are known to occur or are highly likely around the only cave known to be occupied by the species. Because of the single location, threats to the species from fire ants, pollution from nearby activities, and unauthorized activities near the feature, we consider the threat magnitude to be high. Because these threats continue to be imminent and are of a high magnitude, we retain a listing priority number of 2 for this species.

Crustaceans

Anchialine pool shrimp (*Antecaridina lauensis*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Antecaridina lauensis* is an anchialine pool-inhabiting species of shrimp belonging to the family, Atyidae. This species has a disjunct, Indo-Pacific distribution and is indigenous to the Hawaiian Islands. In Hawaii, the species is currently known from two populations on the island of Maui and two populations on the island of Hawaii. The primary threats to this species are habitat loss and predation from nonnative fish species. These threats are ongoing. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Anchialine pool shrimp (*Calliasmata pholidota*)—The following summary is

based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Calliasmata pholidota* is an anchialine pool-inhabiting species of shrimp belonging to the family, Alpheidae. This species has a disjunct, Indo-Pacific distribution and is indigenous to the Hawaiian Islands. In Hawaii, the species is currently known from six populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are habitat loss and predation from nonnative fish species; these threats are ongoing. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Anchialine pool shrimp (*Metabetaeus lohena*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Metabetaeus lohena* is an anchialine pool-inhabiting species of shrimp belonging to the family, Alpheidae. This species is endemic to the Hawaiian Islands and is currently known from populations on the islands of Maui and Hawaii. The primary threats to this species are habitat loss and predation from nonnative fish species; these threats are ongoing. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Anchialine pool shrimp (*Palaemonella burnsi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Palaemonella burnsi* is an anchialine pool-inhabiting species of shrimp belonging to the family, Palaemonidae. This species is endemic to the Hawaiian Islands and is currently known from three populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are habitat loss and predation from nonnative fish species; these threats are ongoing. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Anchialine pool shrimp (*Procaris hawaiana*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Procaris hawaiana* is an anchialine pool-inhabiting species of shrimp belonging to the family, Procaridae. This species is endemic to the Hawaiian Islands and is currently known from two populations on the

island of Maui and one population on the island of Hawaii. The primary threats to this species are habitat loss and predation from nonnative fish species; these threats are ongoing. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Anchialine pool shrimp (*Vetericaris chaceorum*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Troglobitic groundwater shrimp (*Typhlatya monae*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Typhlatya monae* is a subterranean small shrimp known from Puerto Rico, Barbuda, and Dominican Republic. Although in Puerto Rico it was previously found at Mona Island, currently the species is known from only three caves within the Guánica Commonwealth Forest in the municipalities of Guánica, Yauco, and Guayanilla. The species may still be found in the reef deposit aquifers in Mona Island that have not yet been surveyed. Little is known concerning the status of *Typhlatya monae* in either Barbuda or Dominican Republic. Changes in groundwater quality, collection, predation, development projects, and its limited distribution and population numbers threaten this species. These threats are not imminent. Although the known populations are found within protected lands, the threats are of a high magnitude due to the limited distribution of the species. We retain a listing priority number of 5 for this species.

Flowering Plants

Abronia alpina (Ramshaw Meadows sand-verbena)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Abronia alpina* is a small, generally glandular, deeply-rooted perennial herb, 2.5 to 15.2 centimeters (1 to 6 inches) across forming compact mats found on gravel meadow margins between lodgepole pine forest and sagebrush scrub communities at an elevation between 2,621 to 2,652 meters (m) (8,600 to 8,700 feet (ft)). *Abronia alpina* is known from one main population center in Ramshaw Meadow on the Kern Plateau of the Sierra Nevada (California) and from one subpopulation found in adjacent Templeton Meadow. Population estimates from 1985 through

1994 ranged from a low of 69,652 plants in 1986 to 132,215 plants in 1987. Surveys conducted since 1994 indicate that no significant changes have occurred in population size or location. Threats include encroachment of lodgepole pine into the meadow habitat, changes in hydrology of the meadow, and trampling of habitat due to recreational activities. Disease is not known to be a factor for the species at this time; however, gopher activity may result in significant destruction of *Abronia alpina* through collection or burrowing activities. Significant trampling of *Abronia alpina* subpopulations by cattle has occurred in the past; however, in 2001, the U.S. Forest Service (USFS) made the decision to discontinue grazing on the Templeton allotment, which includes Ramshaw Meadow, for a period of 10 years. In January 2004, the USFS determined, as a result of the Sierra Nevada Forest Plan Amendment and the final supplemental environmental impact statement (FSEIS), that livestock grazing posed a threat to this species. However, the FSEIS notes that future decisions to allow livestock grazing will consider effects to this species and this may require updating the 2001 draft Conservation Agreement which the USFS has been using as their management strategy.

Due to the extremely limited geographic range of the species, biological factors such as disease, pest outbreak, and random chance events associated with the highly variable climate can pose a serious threat to the species. *Abronia alpina* apparently is slow to recover from disturbance because of reproductive and dispersal limitations, short life span, and high annual fluctuation in population numbers. Nonadaptive forces such as inbreeding depression may also threaten the species when combined with the fragmented distribution of the species. We conclude that the magnitude of threats to *Abronia alpina* continue to be moderate, rather than high, because all of the species' range occurs on Federal land, which protects the species from private development and facilitates management of the species by Federal agencies. We also conclude these threats continue to be nonimminent, since the threats are not expected to change in the foreseeable future. Therefore, we retain a listing priority of 11 for this species.

Aliciella (Gilia) cespitosa (Wonderland aliceflower)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Wonderland aliceflower or Rabbit

Valley gilia is a plant within the Polemoniaceae or Phlox family found in Wayne County, Utah. The species is primarily associated with sand-filled pockets and crevices of Navajo sandstone on detrital slopes produced by mechanical weathering or erosion of rock in pinyon-juniper/mountain mahogany communities between 5,200 and 9,000 feet in elevation. Surveys from 2000 to 2003 resulted in estimated numbers of 27,000 individual plants. Current threats include recreational trails; off-road vehicle use; collection by rock garden enthusiasts; livestock trampling; and low natural recruitment. Though localized threats exist, the magnitude of threats is low to moderate with none of them considered imminent, as the majority of sites are not easily accessible. Based on these factors, we retain a listing priority of 11 for this species.

Arabis georgiana (Georgia rockcress)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Georgia rockcress grows in a variety of dry situations, including shallow soil accumulations on rocky bluffs, ecotones of gently sloping rock outcrops, and in sandy loam along eroding river banks. It is occasionally found in adjacent mesic woods, but it will not persist in heavily shaded conditions. Currently a total of 18 populations are known from the Gulf Coastal Plain, Piedmont, and Ridge and Valley physiographic provinces of Alabama and Georgia. Populations of this species typically have a limited number of individuals over a small area. Habitat degradation, more than outright habitat destruction, is the most serious threat to this species' continued existence. Disturbance associated with timber harvesting, road building, and grazing has created favorable conditions for the invasion of exotic weeds, especially Japanese honeysuckle (*Lonicera japonica*), in this species' habitat. Eight populations are currently or potentially threatened by the presence of exotics. The Natural Heritage programs in Alabama and Georgia have initiated plans for exotic control at several populations; nonnative plant removal has taken place at several sites. The magnitudes of threats to this species continue to be moderate to low due to the number of populations (18) across multiple counties in 2 states. The primary threat to the species of invading exotics is nonimminent. Thus, we retain a listing priority number of 11 for this species.

Argythamnia blodgettii (Blodgett's silverbush)—The following summary is

based on information in our files. No new information was provided in the petition received on May 11, 2004. This member of the spurge family is currently known from tropical pinelands on limestone rock (pine rocklands) at 18 sites in Miami-Dade and Monroe Counties in Florida. Its range extends from Coral Gables (near central Miami) and southern Miami-Dade County westward to southwestern Long Pine Key, a pineland within Everglades National Park. It is also present in the lower Florida Keys from Windley Key southwest to Big Pine Key. Blodgett's silverbush is protected at Biscayne and Everglades National Parks, the Florida Keys Wildlife and Environmental Area, six Miami-Dade County conservation areas, Lignumvitae Key Botanical State Park, Long Key State Park, National Key Deer Refuge, Pine Ridge Sanctuary (private), and Windley Key Fossil Reef Geological State Park. It is also present at Florida Power and Light's Everglades Mitigation Bank. The species could be present at John Pennekamp Coral Reef State Park. The largest population, up to 10,000 plants, is at Larry and Penny Thompson Park and adjoining publicly owned properties at Richmond Field.

Given the species' narrow range and the small number of individuals that exist where it occurs, Blodgett's silverbush is vulnerable to natural disturbance events such as hurricanes and tropical storms. Other threats include fire suppression and invasive exotic pest plants. However, intensive management and biological control efforts are aimed at eradicating Old World climbing fern (*Lygodium microphyllum*) and improving the overall quality of management on conservation lands. Therefore, based on continuing nonimminent threats of a moderate magnitude, we retain a listing priority number of 11 for Blodgett's silverbush.

Artemisia campestris ssp. *borealis* var. *wormskioldii* (Northern wormwood)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Historically known from eight sites, northern wormwood is currently known from only two populations in Klickitat and Grant Counties, Washington. This plant is restricted to exposed basalt, cobbly-sandy terraces, and sand habitat along the shore and on islands in the Columbia River. The two sites are separated by 200 miles (322 kilometers) of the Columbia River and three large hydroelectric dams. The Klickitat County population is apparently declining; the Grant County population

is stable or declining. Surveys of apparently suitable habitat along 55 miles of the Hanford Reach (the wild flowing reach of the Columbia River) have not detected any additional plants. Threats to Northern wormwood include habitat loss due to dam, railroad, and highway construction; recreational use; manipulation of waterflows by hydroelectric dams resulting in flooding and alteration of historic waterflows; nonnative plants; vulnerability to ecological and genetic factors and naturally occurring, random events; and hybridization with two other species of *Artemisia*. The magnitude of threats continues to be high because the only two remaining populations are widely separated and occur in a dynamic habitat affected by frequently changing water levels. Threats continue to be imminent due to small population sizes and the potential for the elimination of one or both populations by a single disturbance. We retain a listing priority number of 3 for this subspecies.

Astelia waialealae (Painiu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Painiu is a perennial herb found in *Metrosideros polymorpha* dominated mixed montane bog on Kauai, Hawaii. *Astelia waialealae* is known from 3 populations in three bogs within the Alakai swamp region of Kauai, totaling 35 clumps which may only represent 10 to 15 genetically distinct individuals. Thirty clumps are found in one bog. While the species has always been restricted to the bogs of the Alakai, it may have occurred in more bogs in the past and in greater numbers. The largest individual, less than 12 inches (30 centimeters) in diameter, is not reproducing, and no regeneration has been observed from 1995 to the present. This species is threatened by pigs that prey upon and trample plants and seedlings, degrade and/or destroy habitat, and spread the nonnative plants *Juncus planifolius* and *Andropogon virginicus*, which compete with *Astelia waialealae*. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Astragalus equisolensis (Horseshoe milkvetch)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Horseshoe milkvetch, *Astragalus equisolensis*, is a plant within the Fabaceae or Leguminosae (Pea family) only found in Uintah County, Utah. Horseshoe milkvetch is associated with the mixed desert and salt desert shrub

communities that are generally dominated by sagebrush (*Artemisia* sp.), shadscale (*Atriplex confertifolia*) and horsebrush (*Tetradymia nuttallii*). Horseshoe milkvetch is found on the Duchesne River Formation at elevations between 4,800 and 5,200 feet. Based on surveys in 1992, the population was estimated at approximately 10,000 individuals. Threats continue to be habitat degradation and fragmentation associated with oil and gas exploration; road development; off-road vehicle use; and species instability due to low numbers. Currently the threats are low to moderate as only a few wells have been drilled in Horseshoe milkvetch habitat; however, these threats continue to be imminent as oil and gas development is foreseeable in the near future. Because of these factors, we retain a listing priority of 8 for this species.

Astragalus tortipes (Sleeping Ute milkvetch)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Astragalus tortipes* is a perennial plant that grows only on the Smokey Hills layer of the Mancos Shale Formation on the Ute Mountain Ute Indian Reservation in Montezuma County, Colorado. In 2000, a total of 3,744 plants were recorded at 24 locations covering 500 acres on a specific substrate within an overall range of 64,000 acres. Available information from 2000 indicates that the species remains stable. Previous and ongoing threats from borrow pit excavation, off-highway vehicles, an expanding junkyard, irrigation canal construction, and a prairie dog colony have had minor impacts that reduced the range and number of plants by small amounts. Oil and gas development may occur in the future within the species' range, but is not likely within the substrate that supports occupied habitat. Therefore, we retain a listing priority number of 8 for *A. tortipes*.

Bidens amplexans (Kookooalu)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Bidens campylotheca ssp. *pentamera* (Kookooalu)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Bidens campylotheca ssp. *waihoiensis* (Kookooalu)—The following summary is

based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Kookooalu is an erect, perennial found in wet *Acacia-Metrosideros* forest on Maui, Hawaii. This subspecies is known from one population of 200 individuals, restricted to the island of Maui. This subspecies is highly threatened by ongoing cattle grazing that degrades and destroys habitat. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 3 for this subspecies.

Bidens conjuncta (Kookooalu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Kookooalu is an erect perennial herb found in *Metrosideros-Dicranopteris* lowland to montane wet forest and shrubland on Maui, Hawaii. Six populations are known, and the number of individual plants totals approximately 2,200 scattered throughout upper elevation drainages of west Maui. Although the overall range of the species has not changed, the number of remaining individuals has declined over the last decade or so. This species is moderately threatened by pigs and rats that degrade and destroy habitat, and that eat vegetative parts and fruit of *B. conjuncta*, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a moderate magnitude and are considered imminent, we retain a listing priority number of 8 for this species.

Bidens micrantha ssp. *ctenophylla* (Kookooalu)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Brickellia mosieri (Florida brickell-bush)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Calamagrostis expansa (no common name)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Calamagrostis hillebrandii (no common name)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided

in the petition received on May 11, 2004.

Calliandra locoensis (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Calliandra locoensis* is currently known from only two localities in the municipalities of Yauco and Sabana Grande, in southwestern Puerto Rico. The restricted distribution, urban development, management practices, small number of individuals in the two populations, and catastrophic natural events are high threats to this species. These threats are not imminent because both localities fall within protected lands, but they continue to be of a high magnitude since they affect both of this plant's known populations. Therefore, we retain a listing priority of 5 for this species.

Calochortus persistens (Siskiyou mariposa lily)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files and the petition received on September 10, 2001.

Calyptanthus estremerae (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Calyptanthus estremerae* is a small tree from the subtropical moist forest of northwestern Puerto Rico, in the municipalities of Camuy, Utuado, and Arecibo. The small number of individuals in the two populations, the species' limited distribution, catastrophic natural events, and the potential destruction of specimens due to expansion of recreational facilities threaten the species. These threats, while continuing to be a high magnitude, are not imminent, because the largest known population is found within protected lands. We retain a listing priority of 5 for this species.

Canavalia napaliensis (Awikiwiki)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Canavalia pubescens (Awikiwiki)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Awikiwiki is a perennial climber found in lowland dryland forest on Maui, Lanai, Kauai, and is possibly on the island of Niihau, Hawaii. This species is known from 10 populations totaling less than 200 individuals. This species is

highly threatened by development; goats that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace them. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Castilleja aquariensis (Aquarius paintbrush)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Aquarius paintbrush is a plant, within the Scrophulariaceae or Figwort family, found only on the Aquarius plateau of south central Utah. Habitat characteristics are meadow openings and open spruce-fir stands at 9,800 to 11,300 feet in elevation. Trends for this species appear to be cyclic with individual plants ranging from 15,000 to 45,000 depending on the year. A correlation may exist between precipitation and plant numbers. Threats to the Aquarius paintbrush are wildlife and domestic livestock grazing that adversely affects this species by trampling and consumption of plants; concentration of livestock associated with water sources; grasshopper, cricket or aphid infestations; road construction for access to recreational and timber harvesting areas; unauthorized off-road vehicle activity; drought conditions; and reduction of genetic diversity due to low population numbers and fragmentation. Monitoring data suggests that in good years, Aquarius paintbrush are able to regenerate and survive under domestic livestock grazing, but the species appears to be more affected by grazing during drought conditions. The overall impacts to this species continue to be of a moderate to low magnitude of threat. Because livestock and wildlife associated with Aquarius paintbrush are present, grazing threats continue to be imminent. Because of these factors, we retain a listing priority number of 8 for this species.

Castilleja christii (Christ's paintbrush)—The following summary is based on information contained in our files and the petition received on January 2, 2001. Christ's paintbrush is endemic to subalpine meadow and sagebrush habitats in the upper elevations of the Albion Mountains, Cassia County, Idaho. The single population of this species, which covers only 81 ha (200 ac), is restricted to the summit of Mount Harrison. The population appears to be stable, although the species is threatened by a variety of activities. Most threats involve seasonal impacts, including unauthorized ORV use that results in erosion of the plant's habitat and

mortality of individual plants; livestock grazing that adversely affects Christ's paintbrush by trampling and consumption of plants, which results in reduced reproductive success; trampling by hikers and road maintenance activities. Also, road maintenance activities threaten the species through the introduction of exotic plants. For example, in 1997 smooth brome (*Bromus inermis*) was planted along a road after a paving project. By 2004, the smooth brome had expanded from the roadside several hundred feet into the Christ's paintbrush population and may pose a significant threat to the species.

The Forest Service has constructed fencing that will largely reduce the threat of seasonal livestock trespass impacts for most of the Mt. Harrison summit area. The Forest Service has and continues to build rock barriers along roads within Christ's paintbrush habitat to further discourage off-road vehicle use. Most recently, the Forest Service designated a large portion of the population as a Botanical Special Interest Area and, in conjunction with our Field Office, installed conservation signs that provide information about the species. Due to these efforts, the threats continue to be nonimminent and are of a low to moderate magnitude. Therefore, we retain a listing priority number of 11 for this species.

Chamaecrista lineata var. *keyensis* (Big Pine partridge pea)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This pea is endemic to the lower Florida Keys. Historically, it was known from Big Pine, No Name, Ramrod, and Cudjoe Keys (Monroe County, Florida). It is now believed to be restricted to Big Pine Key. Roughly 90 percent of its current range is within the National Key Deer Refuge. The Big Pine partridge pea is well distributed on Big Pine Key, with a population estimate of roughly 10,000 individuals. It is restricted to pine rockland communities and hardwood hammock edges. Pine rocklands encompass approximately 582 hectares (1,438 acres) on Big Pine Key. Pine rockland communities are maintained by relatively frequent fires. In the absence of fire, woody encroachment ensues and shades out the pea. Lack of fire poses the greatest threat to the pea. The Refuge has an active prescribed fire program, though with many constraints. Sea level rise constitutes another threat somewhat less imminent, although of greater magnitude. Based on nonimminent threats that continue to be of high magnitude, we retain a listing priority number of 6 for the Big Pine partridge pea.

Chamaesyce deltoidea pinetorum (Pineland sandmat)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Chamaesyce deltoidea ssp. *serpyllum* (Wedge spurge)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. Wedge spurge is a small herb, flat to the ground, forming patches of rounded or wedge-shaped leaves among the limestone rocks. It has always been restricted to Big Pine Key in Monroe County, Florida. Roughly 90 percent of the range falls within the National Key Deer Refuge. It is not widely or evenly distributed, occurring within 22 percent of 145 sample plots in pine rockland. The total population is on the order of 1,001 to 10,000 plants. It is restricted to pinelands on limestone rock (pine rockland), at sites with extensive exposed rock at the surface, low total understory cover and low hardwood density. Pine rocklands encompass approximately 582 hectares (1,438 acres) on Big Pine Key. These communities are maintained by relatively frequent fires; without fire, tropical shrubs and trees encroach and the spurge is eventually shaded out. Fire restrictions pose the greatest measurable threat. The National Key Deer Refuge has an active prescribed fire program, though with many constraints. Sea level rise during the twentieth century was shown to have affected upland vegetation in the lower Keys. This threat, though less imminent, is ultimately of greater magnitude. Hurricanes pose additional threats. Therefore, we assign the wedge spurge a listing priority number of 6 due to continuing nonimminent threats of a high magnitude.

Chamaesyce eleanoriae (Akoko)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Chamaesyce remyi var. *kauaiensis* (Akoko)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Chamaesyce remyi var. *remyi* (Akoko)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No

new information was provided in the petition received on May 11, 2004.

Charpentiera densiflora (Papala)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Chorizanthe parryi var. *fernandina* (San Fernando Valley spineflower)—The following summary is based on information contained in our files and the petition received on December 14, 1999. San Fernando Valley spineflower is currently known from only two populations. The plants are threatened by habitat loss due to residential development, competition from nonnative plants (e.g., several nonnative grasses), random events such as erosion and fire, and the potential loss of the native pollinator community due to competition with and predation by the nonnative Argentine ants (*Linepithema humilis*).

The site in Los Angeles County, the Newhall Ranch, is proposed for residential development that has the potential to cause the loss of most, if not all, of the remaining plants at that site. Representatives of Newhall Ranch informed us that they intended to pursue a Candidate Conservation Agreement (CCA) for the plant, and, in 2004, presented us with a preliminary plan that would avoid removing approximately 74 percent of the area the plant is believed to occupy. However, the level of detail available was not sufficient for us to conclude that the preserved populations would be appropriately buffered from adjacent land uses, or that sufficient native vegetation would remain in proximity to the preserved areas to support a pollinator community. We received a draft CCA in early February 2005 but have not yet thoroughly reviewed it.

The site in Ventura County, the former Ahmanson Ranch, is now under the auspices of the Santa Monica Mountains Conservancy, a joint powers authority operated by the State to conserve lands within the Conservancy’s sphere of influence. As a result, the direct threats to the species from the former Ahmanson Ranch development plan have been eliminated, and we are working with the new landowners to manage the site for the benefit of *Chorizanthe parryi* var. *fernandina*. Since the threats continue to be of a high magnitude but are nonimminent, we retain a listing priority number of a 6 for this plant variety.

Chromolaena frustrata (Cape Sable thoroughwort)—See above in “Summary

of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Consolea corallicola (Florida semaphore cactus)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This species is endemic to the Florida Keys and is known to naturally occur only at Little Torch Key and Swan Key. It was discovered on Big Pine Key in 1919 but has since been extirpated there as a result of road building and poaching. The Florida semaphore cactus grows close to salt water on bare rock with a minimum of humus-soil cover in or along the edges of hammocks near sea level. About seven mature plants exist in the population at The Nature Conservancy’s Torchwood Hammock Preserve on Little Torch Key. Two sexual morphs (males and weak hermaphrodites) comprise the extant population on Little Torch Key. The female sex morph is absent from the population and sexual reproduction at this site without human intervention is not possible. Regeneration in this population is restricted to clonal propagation. At least 629 plants were discovered on Swan Key, Biscayne National Park in November of 2001. The reproductive biology of the population found on Swan Key is yet to be determined. Outplanting has resulted in the reestablishment of a population in Dagny Johnson Key Largo Hammock Botanical State Park in North Key Largo. The causes for the population decline of this species include destruction or modification of habitat, predation from nonnative *Cactoblastis cactorum* moths, unauthorized collection, and the occurrence of hurricanes and other significant natural disturbance events. Based on imminent threats that continue to be of a high magnitude, we retain a listing priority number of 2 for the Florida semaphore cactus.

Cordia rupicola (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Cordia rupicola* is a small shrub that is found in the municipalities of Peñuelas and Guánica in southern Puerto Rico, as well as the island of Anegada in the British Virgin Islands. The current status of the Anegada population is not known. The restricted distribution, urban expansion, and significant natural disturbance events are threats to the Puerto Rico population. Because the threats to this species continue to be

imminent and of a high magnitude, due to only a small fraction of the species’ known population occurring within protected lands, we retain a listing priority of 2.

Cyanea asplenifolia (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea asplenifolia* is a shrub found in *Acacia-Metrosideros* forest on Maui, Hawaii. *Cyanea asplenifolia* was thought to be extinct following collections in 1920 on west Maui until it was rediscovered in 1995 on east Maui. Two additional populations of approximately 30 individuals total have been rediscovered on west Maui, but the largest population is found in Kipahulu Valley on east Maui. Until 1991, when flowering occurred, the Kipahulu population was thought to be *Cyanea grimesiana* ssp. *grimesiana*. Flowers and fruits led to a valid identification of this population as *Cyanea asplenifolia*. In 1991, 350 individuals were counted. During a return visit in 1995, the population was estimated to be only approximately 200 individuals, showing a decline in the population for reasons not determined. Currently, this population has declined to a few individuals. An additional 25 individuals have been found in Makawao and Koolau forest reserves on east Maui. This species is threatened by pigs and goats that eat this plant and degrade and destroy its habitat, by rats and slugs that directly prey upon and defoliate the species, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Cyanea calycina (Haha)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyanea eleeleensis (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea eleeleensis* is a shrub found in wet forest on Kauai, Hawaii. This species was discovered in 1977, known from one population totaling less than ten individuals in Wainiha Valley on Kauai. This species is highly threatened by pigs that degrade and destroy habitat, by rats and slugs that eat this plant, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and

are considered imminent, we retain a listing priority number of 2 for this species.

Cyanea kuhihewa (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea kuhihewa* is a shrub found in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest on Kauai, Hawaii. This recently discovered species is known from one population totaling 6 individuals in Limahuli Valley on Kauai. This species was originally included in the proposed rulemaking for Kauai II plant species submitted to the Regional Office but was removed from the proposed rule published in 60 FR 49359 on October 2, 1995, because the species had not yet been described and published at that time. In 2003, the last known individual in the wild died, but prior to that time, seeds were collected for genetic storage, and the species is still found in cultivation. This species is highly threatened by pigs that degrade and destroy habitat, by rats and slugs that eat this plant, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Cyanea kunthiana (Haha)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyanea lanceolata (Haha)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyanea obtusa (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea obtusa* is a shrub found in *Metrosideros polymorpha* mixed mesic forest on Maui, Hawaii. *Cyanea obtusa* was thought to be extinct following the initial collections from 1841 to 1919 on east and west Maui until it was rediscovered in 1981 on east Maui. The one known population was extirpated by 1989. In 1996, the species was rediscovered on east Maui, in a population of only four individuals. In 1999, additional plants were found, increasing the known populations to six and the known number of individuals to approximately 30. This species is highly

threatened by goats, pigs, cattle, rats, and slugs that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Cyanea tritomantha (Aku)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyrtandra filipes (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Haiwale is a shrub found in lowland wet and mesic forest on Maui and Molokai, Hawaii. Historically rare, *Cyrtandra filipes* was typically found in southeastern Molokai and west Maui. Currently, this species is known from three populations, one on Molokai and two on Maui, totaling approximately 2,200 individuals. There is some question as to the taxonomic identity of the Maui populations, which do not fit the description of the species precisely. If, upon further taxonomic study, the Maui populations are determined not to be this species, then it is even rarer, with only the Molokai population of a few individuals remaining. This species is highly threatened by pigs and rats that degrade and destroy habitat, by deer that eat this plant, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Cyrtandra kaulantha (Haiwale)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyrtandra oenobarba (Haiwale)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyrtandra oxybapha (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyrtandra oxybapha* is a shrub found in *Metrosideros polymorpha-Cheirodendron trigynum* montane wet forest to mesic *Acacia-Metrosideros* forest on Maui, Hawaii. Historically

rare, *Cyrtandra oxybapha* was typically found in wet forest on the island of Maui. Currently, this species is known only from one population totaling 250 to 300 individuals in the Kahikinui area of east Maui. This species is highly threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Cyrtandra sessilis (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyrtandra sessilis* is a shrub found in wet gulch bottoms and slopes of mesic valleys and wet forests on Oahu, Hawaii. This species is known from two populations totaling approximately 50 individuals in the Waikane area of the Koolau Mountains. This species is highly threatened by pigs that degrade and or destroy habitat and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Dalea carthagenensis floridana (Florida prairie-clover)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Dichanthelium hirstii (Hirsts’ panic grass)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Dichanthelium hirstii*, a perennial grass, produces erect leafy flowering stems from May to October. *Dichanthelium hirstii* occurs in coastal plain intermittent ponds, usually in wet savanna or pine barren habitats and is found at only one site in New Jersey, one site in Delaware, and two sites in North Carolina. While all four extant *Dichanthelium hirstii* populations are located on public land or privately owned conservation lands, natural threats to the species from encroaching vegetation and fluctuations in climatic conditions remain of concern and may be exacerbated by anthropomorphic factors occurring adjacent to the species’ wetland habitat. Given the low numbers of plants found at each site, even minor changes in the species’ habitat could result in local extirpation. Loss of any known sites could result in a serious protraction of the species range. However, the most immediate and

severe of the threats to this species (*i.e.*, ditching of the Labounsky Pond site, and encroachment of aggressive vegetative competitors) have been curtailed or are being actively managed by The Nature Conservancy at the New Jersey site, the Delaware Division of Fish and Wildlife, and Delaware Natural Heritage Program at the Assawoman Pond site, and the Marine Corps at the Camp Lejeune site in North Carolina. Based on continued threats of a high magnitude but low imminence, we retain a listing priority number of 5 for this species.

Digitaria pauciflora (Florida pineland crabgrass)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This perennial grass grows up to 3 feet tall. It is almost entirely restricted to Long Pine Key, an island of pineland and marl prairies surrounded by wetlands in Everglades National Park, Miami-Dade County, Florida. It was observed once in a “transverse glade” at a site now managed by Miami-Dade County at the Richmond pine rocklands. Florida pineland crabgrass occurs most commonly at the margin between pine rockland and marl prairie, overlapping somewhat into both of these ecosystems. These habitats, particularly marl prairie, flood for one to several months during the wet season. Pine rocklands and their associated prairies are fire-maintained, with a natural fire frequency of 3 to 7 years for pine rocklands and perhaps slightly more frequent for marl prairies. In the absence of fire, tropical hardwoods quickly encroach. This grass may once have occurred in pinelands of what is now the Miami urban area, based on a specimen collected in 1903. Essentially no suitable habitat appears to remain outside of Everglades National Park. Threats to Florida pineland crabgrass from invasive exotic plants have been managed by the National Park Service, but the threat of Old World climbing fern and other new exotic plants within the decade are likely to be realized. Based on nonimminent threats that continue to be of a high magnitude, we retain a listing priority number of 5 for the Florida pineland crabgrass.

Dubautia imbricata ssp. *imbricata* (Naenae)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Dubautia plantaginea ssp. *magnifolia* (Naenae)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11,

2004. *Dubautia plantaginea* ssp. *magnifolia* is a shrub found in bogs and wet forest on Kauai, Hawaii. This recently rediscovered species is known from two populations totaling 100 individuals near the summit of Waialeale on the island of Kauai. This species is highly threatened by pigs that degrade and destroy habitat and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are ongoing (*i.e.*, imminent), we retain a listing priority number of 3 for this subspecies.

Dubautia waialealae (Naenae)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Echinomastus erectocentrus var. *acunensis* (Acuna cactus)—The following summary is based on information contained in our files and the petition received on October 30, 2002. The acuna cactus is known from six sites on well-drained gravel ridges and knolls on granite soils in Sonoran Desert scrub association at 1300–2000 feet elevation. Habitat destruction has been a threat in the past and is a potential future threat to this species. New roads and illegal activities have not yet directly affected the cactus populations at Organ Pipe Cactus National Monument (OPCNM), but areas in close proximity to these known populations have been altered. Cactus populations located in the Florence area have not been monitored and these populations may be in danger of habitat loss due to recent urban growth in the area. Urban development near Ajo, Arizona, as well as that near Sonoyta, Mexico, is a significant threat to the acuna cactus. Populations of the acuna cactus within the OPCNM have shown a 50 percent mortality rate in recent years. The reason(s) for the mortality are not known, but continuing drought conditions are thought to play a role. The Arizona Plant Law and the Convention on International Trade in Endangered Species of Wild Fauna and Flora provide some protection for the acuna cactus. However, illegal collection is a primary threat to this cactus variety and has been documented on the OPCNM in the past. While the threats continue to be of a high magnitude, they are currently nonimminent. Thus, we retain a listing priority number of 6 for this cactus variety.

Erigeron basalticus (Basalt daisy)—The following summary is based on information from our files. No new

information was provided in the petition received on May 11, 2004. This is a small, herbaceous, perennial plant in the Asteraceae (sunflower) family. The species is endemic to Yakima and Kittitas Counties, Washington, and occurs on canyon walls along the Yakima River and Selah Creek, a tributary of the Yakima River. The species occupies approximately 165 ac (67 ha) within its known distribution of approximately 20 mi² (52 km²). Basalt daisy only grows in small crevices on basalt cliffs. The total population of roughly 7,000 plants is distributed among 8 potentially interbreeding subpopulations. The overall size of the population, both in numbers of plants and total area occupied, has remained relatively stable since at least 1988. However, the numbers of individuals in the four smallest subpopulations have decreased substantially, and two subpopulations currently support fewer than 20 plants each. The causes of these declines, or whether they represent a recent or longterm trend in the subpopulations, are unknown. The extremely limited range and specific habitat requirements of basalt daisy make it vulnerable to localized impacts, including threats from adjacent herbicide and pesticide spraying from agricultural activities and highway/railroad maintenance. In addition, quarrying in the vicinity of several subpopulations may destroy individual plants or negatively impact the species’ habitat. While some threats to the species have been identified, it is likely not susceptible to other potential impacts (*e.g.*, conversion, grazing), primarily due to the inaccessibility of the near-vertical basalt cliffs it occupies. Based on the available information, we consider the magnitude of threat to basalt daisy to be moderate-to-low, and the identified threats continue to be nonimminent. Therefore, we retain a listing priority of 11 for this species.

Erigeron lemmonii (Lemmon fleabane)—The following summary is based on information contained in our files and the petition received in July 1975. The species is known from one site on the Fort Huachuca Military Reservation of southeastern Arizona. Approximately 70 individual plants are at this site. The single largest threat to the species is from significant wildfire in the canyon where the plant occurs. An intense wildfire in the narrow canyon would almost certainly desiccate plants on the cliff face, possibly directly killing individuals or stressing plants, and, thereby leading to lower reproductive output. Fort Huachuca is willing to develop a

conservation agreement for this species. Measures have been taken to reduce the threat of wildfire and also the threats from recreational rappelling, which is not allowed on the cliff faces occupied by the plant. Due to these nonimminent threats of a high magnitude, we retain a listing priority number of 5 for this species.

Eriogonum codium (Umtanum Desert buckwheat)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. This is a long-lived woody perennial plant in the Polygonaceae (buckwheat) family that forms low mats. Individual plants may exceed 100 years of age. The only known population of the species occurs exclusively on exposed basalt from the Lolo Flow of the Wanapum Basalt Formation in Benton County, Washington. The population has a discontinuous distribution along a narrow, 1.0 mi (1.6 km) long mountain ridge top. It is unknown if the historical distribution of Umtanum desert buckwheat was different from the species' current distribution. There are a number of ongoing threats to Umtanum desert buckwheat. The species is not well adapted to fire, and negative impacts to the species from past fires have been significant. In addition, Umtanum desert buckwheat plants are easily damaged by trampling or crushing by off-road vehicles. Digging activities and soil disturbance as a result of prospecting and collecting of petrified rock may also threaten Umtanum desert buckwheat as a result of. Finally, the species appears to have a very low reproductive rate. The factors responsible for the lower-than-expected number of seedlings in the population are unknown. Possible factors include low seed production, low seed or pollen viability, low seedling vigor and survival, impacts to plant pollinators or dispersal mechanisms, and insect predation of seeds. The only known population of Umtanum desert buckwheat is small and limited to a single site. Based on the available information, we continue to consider the magnitude of threat to Umtanum desert buckwheat to be high, and the identified threats to be imminent. We retain a listing priority of 2 for Umtanum desert buckwheat.

Eriogonum kelloggii (Red Mountain buckwheat)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Red Mountain buckwheat is a perennial herb that is endemic to serpentine habitat of lower montane forests found between 1,900 and 4,100

feet. Its distribution is limited to the Red Mountain and Little Red Mountain areas of Mendocino County, California, where it occupies 50 acres and 900 square feet, respectively. Occupied habitat at Red Mountain is scattered over 4 square miles. Total population size is estimated at between 20,000 and 30,000 plants, which occur in 44 polygons. Intensive monitoring of permanent plots on three study sites in Red Mountain suggests considerable annual variation in plant density and reproduction, but no discernable population trend was evident in two of three study sites. One study site showed a 65 percent decline in plant density over 11 years. The primary threat to the species is the potential for mining; the species distribution overlaps a number of mining claims, none of which are currently active. Surface mining, which would destroy all habitat suitability in affected areas, would be used to extract chromium and nickel. The species distribution by ownership is described as follows: Federal (Bureau of Land Management), 69 percent; State of California, 1 percent; and private, 30 percent. Given the continued high magnitude but nonimminent threats to the small, scattered populations, we retain a listing priority number of 5 for this species.

Festuca hawaiiensis (no common name)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Festuca ligulata (Guadalupe fescue)—The following summary is based on information from our files and in the petition received in 1975. Guadalupe fescue occurs in Big Bend National Park, Texas, along a trail near Boot Springs. One of the two Mexican populations previously known was verified to persist in 2004. The single known U.S. population is bisected by a trail and subject to occasional trampling by horses and hikers. New trails are planned that may affect this species, but plans have not been finalized. The effect of fire on the species is uncertain. The magnitude of these threats to Guadalupe fescue continue to be moderate to low and nonimminent because Big Bend National Park is committed to species management through a conservation agreement to reduce threats which is yet to be fully implemented. Based on these threats imposed on the species, we retain a listing priority number of 11.

Gardenia remyi (Nanu)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our

files. No new information was provided in the petition received on May 11, 2004.

Geranium hanaense (Nohoanu)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Geranium hillebrandii (Nohoanu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Geranium hillebrandii* is a decumbent subshrub found in bogs on Maui, Hawaii. Previously known from two populations totaling approximately 500 individuals, it is currently known from over 2,000 individuals, the result of more thorough surveys. This species is moderately threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a moderate magnitude and are considered imminent, we retain a listing priority number of 8 for this species.

Geranium kauaiense (Nohoanu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Geranium kauaiense* is a decumbent subshrub found in bogs and bog margins on Kauai, Hawaii. This species is known from three populations totaling 100 to 200 individuals in the Alakai Swamp area. This species is highly threatened by pigs that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 2 for this species.

Gonocalyx concolor (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Gonocalyx concolor* is a small evergreen epiphytic shrub found within the dwarf or elfin forest type in the Carite Commonwealth Forest in the municipalities of Guayama, Cayey, Caguas, San Lorenzo, and Patillas of southeastern Puerto Rico. The population previously reported from the Luquillo Mountains is apparently no longer extant. The construction of roads and telecommunication towers, certain forest management practices, lower number of specific pollinators, significant natural disturbance events, and its limited distribution and population numbers threaten this species. Although the magnitude of

these threats continues to be high, they are not imminent because the known populations are found within protected lands, and initial efforts at propagation have been successful. Therefore, we retain a listing priority of 5 for this species.

Hazardia orcuttii (Orcutt's hazardia)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files and the petition received on March 8, 2001.

Hedyotis fluvialis (Kamapuaa)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Helianthus verticillatus (Whorled sunflower)—The following information is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The whorled sunflower is found in moist, prairie-like openings in woodlands and along adjacent creeks. Despite extensive surveys throughout its range, only six sites are known for this species. There are two sites documented for Cherokee County, Alabama; three in Floyd County, Georgia; and a single site in Madison County, Tennessee. This species appears to have restricted ecological requirements and is dependent upon the maintenance of prairie-like openings for its survival. Active management of habitat is needed to keep competition and shading under control. Much of its habitat has been degraded or destroyed for agricultural, silvicultural, and residential purposes. The largest population is in Georgia and is under a conservation easement of 600 acres to The Nature Conservancy. We continue to assign a listing priority number of 11 to this species as the magnitude of threats is considered "moderate" since the largest site is under permanent protection and the threats are considered "nonimminent" since the whorled sunflower appears to withstand some disturbance and there are no known immediate threats to the sites.

Hibiscus dasycalyx (Neches River rose-mallow)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Neches River rose-mallow is a perennial woody herb growing 3–7 feet tall with one or more stems per clump and white flowers 3–6 inches wide, consisting of five 2–4-inch-long white petals with deep red or purple at the base. The Neches River rose-mallow appears to be restricted to wetlands, or

those portions of wetlands that are exposed to open sun and normally hold standing water early in the growing season, with water levels dropping during late summer and fall. This species appears to have community dominance within that narrow band between high and low water levels in wetlands exposed to open sun. However, historical habitat has been affected by drainage or filling of floodplain depressions and oxbows, stream channelization, road construction, timber harvesting, agricultural activities (primarily mowing and grazing), and herbicide use. Threats that continue to potentially affect the species' habitat include wetland alteration, herbicide use, grazing, and mowing during the species' growing and flowering period.

A 1995 status survey of 10 counties resulted in confirmation or discovery of the species in only three sites, but in three separate counties and three different watersheds, suggesting a relatively wide historical range. These three populations are within highway rights-of-way (ROW) (Ponta site in Cherokee County; Lovelady in Houston County; and Highway 94 in Trinity County) and are monitored by the Texas Parks and Wildlife Department and are somewhat protected by a management agreement with the Texas Department of Transportation. Because these sites are still vulnerable to adjacent agricultural activities such as herbicide spraying, they support relatively low population numbers: Ponta (Highway 204) has ranged from 1 to 5 plants; Lovelady (Highway 230), 3–14 plants; and Highway 94, 15–49 plants. Continued surveys for *H. dasycalyx* have resulted in identifying several new populations. About 300 plants were found on land owned by the Temple-Inland Corporation in east Trinity County. A Candidate Conservation Agreement now covers this site, but smaller numbers have been seen in recent years, possibly due to changes in the wetland's hydrology. Another site was discovered on land owned by the Champion International Corporation (near White Rock Creek in west Trinity County). A Candidate Conservation Agreement was also established for this site, which generally supported 300–400 plants. However, the status of this population is currently unknown due to a recent change in ownership.

In west Houston County, a population of 300–400 plants discovered on private land has been purchased by the Natural Area Preservation Association, a land trust organization, in order to protect this land in perpetuity. In east Houston County, a population was recently

discovered in Compartment 55 in Davy Crockett National Forest (DCNF) at the south end of Forest Road 503. This population is large, but has not yet been fully tallied. DCNF represents the only public land within the range of the rose-mallow. In 2000, nearly 800 plants were introduced into Compartments 16 and 20 of the forest as part of a reintroduction effort. One population has retained high numbers, but the second has been impacted by a change in hydrology. A small dam may be installed to restore original wetland conditions. Three more sites in DCNF have been identified as potential sites for reintroduction efforts.

Some populations of this species are at risk of genetic swamping by other *Hibiscus* species. Hybridization has occurred at both the Ponta and Highway 94 sites. Stephen F. Austin State University (SFASU) is carrying out a genetic analysis of *H. dasycalyx* and similar species to better define morphological characteristics. SFASU is also carrying out a habitat study of *H. dasycalyx* and developing plants for reintroduction purposes. Because the threats continue to be of a high magnitude and are nonimminent, we retain a listing priority number of 5 for the Neches River rose-mallow.

Indigofera mucronata keyensis (Florida indigo)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Ivesia webberi (Webber ivesia)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Ivesia webberi* is a low, spreading, perennial herb that occurs very infrequently in Lassen, Plumas, and Sierra Counties in California, and in Douglas and Washoe Counties, Nevada. The species is restricted to sites with sparse vegetation and shallow, rocky soils composed of volcanic ash or derived from andesitic rock. Occupied sites generally occur on mid-elevation flats, benches, or terraces on mountain slopes above large valleys along the transition zone between the eastern edge of the northern Sierra Nevada and the northwestern edge of the Great Basin Desert. Currently, the global population is estimated at approximately 4.8 million individuals at 15 known sites. The Nevada sites support nearly 98 percent of the total number of individuals (4.7 million) on about 30 acres of occupied habitat. The California sites are larger in area, totaling about

156 acres, but support fewer individuals (approximately 115,000).

The primary threats to *Webber ivesia* include urban development, authorized and unauthorized roads, off-road vehicle activities and other dispersed recreation, livestock grazing and trampling, fire and fire suppression activities including fuels reduction and prescribed fires, and displacement by noxious weeds. Despite the high numbers of individuals, observations in 2002 and 2004 confirmed that direct and indirect impacts to the species and its habitat, specifically from urban development and off-highway vehicle activity, remain high and are likely to increase. However, the U.S. Forest Service has committed to develop a conservation strategy and monitoring program to protect this species on National Forest lands, and the State of Nevada has recently listed the species as critically endangered, which provides a mechanism to track future impacts on private lands. In addition, both the Forest Service and State of Nevada have agreed to coordinate closely on all activities that may affect this species. For these reasons, we have determined that the threats to *Webber ivesia* continue to be of a high magnitude and nonimminent and are maintaining the listing priority number of 5.

Joinvillea ascendens ssp. *ascendens* (Ohe)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Ohe is an erect herb found in wet *Metrosideros polymorpha* forest on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, Hawaii. *Joinvillea ascendens* ssp. *ascendens* is known from 50 to 100 populations totaling 100 to 200 individuals throughout its range. Plants are typically found as only one or two individuals, with miles between populations. This subspecies is the only representative of this monotypic species in Hawaii. This subspecies is highly threatened by pigs that degrade and destroy habitat, by an unknown fungus, and by nonnative plants that outcompete and displace it. Because the threats continue to be of a high magnitude and are considered imminent, we retain a listing priority number of 3 for this subspecies.

Keysseria erici (no common name)—See above in “Summary of Listing Priority Changes in Candidates and Other Taxonomic Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Keysseria helenae (no common name)—See above in “Summary of Listing Priority Changes in Candidates and Other Taxonomic Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Korthalsella degeneri (Hulumoa)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Labordia helleri (Kamakahala)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Labordia pumila (Kamakahala)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Leavenworthia crassa (Glade)—The following information is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species of glade is a component of glade flora, occurring in association with limestone outcroppings. *Leavenworthia crassa* is endemic to a 13-mile radius area in north central Alabama in Lawrence and Morgan Counties, Alabama, where only six populations of this species are documented. Glade habitats today have been reduced to remnants fragmented by agriculture and development. Populations of this species are now located in glade-like areas exhibiting various degrees of disturbance including pastureland, roadside rights-of-way, and cultivated or plowed fields. The most vigorous populations of this species are located in areas which receive full or near full sunlight with limited herbaceous competition. The magnitude of threat continues to be high for this species particularly with the limited number of populations, and the immediacy of threat is nonimminent since there are no known projects planned that would destroy any sites and the species is able to withstand some disturbance. Thus, we retain a listing priority number of 5 for this species.

Leavenworthia texana (Texas golden glade)—The following summary is based on information from our files. No new information was provided in the

petition received on May 11, 2004. The Texas golden glade is a small annual member of the mustard family, with deep, yellow petals only 7–10 mm long; flowering is February through March. The glade occurs only on the Weches outcrops of east Texas in San Augustine County and, historically, Sabine County. The Weches geologic formation consists of a layer of calcareous sediment, lying above a layer of glauconite clay deposited up to 50 million years ago. Erosion of this fossil-rich complex has produced a rugged topography of steep, flat-topped hills and escarpments along Highway 21 through north San Augustine County and west Sabine County. It has also created the unique ecology of Weches glades: islands of thin, loamy, seepy, alkaline soils that support open-sun, herbaceous, and highly diverse and specialized plant communities.

More than 100 species representing at least 39 plant families, including the federally endangered white bladderpod (*Lesquerella pallida*), have been documented on Weches glades. The glade was historically recorded at eight sites, all in a narrow line along north San Augustine County and west Sabine County, following the Weches formation. All sites are on private land. Habitat of the species at two of these locations has since been eliminated due to glauconite mining. Two more sites are currently closed to visitors and the status of the glade at these sites is unknown. However, a large, currently closed glauconite mine was created just adjacent to these sites 6 years ago, and may have altered the area's hydrology. One historic site in Sabine County (east of San Augustine County) was rediscovered in 1998 and found to support over 300 plants. However, this site has since been modified by the landowner and may no longer support glades. Only two known populations remain in San Augustine County. The Chapel Hill site is less than 0.1 ha (less than ¼ ac) in size and supports population numbers of 67–200. The Kardell site is less than 9 m² (less than 100 ft²) in size and supports 96–490 plants. An introduced population in Nacogdoches County has numbered about 270–300 within an area of about 18 m² (200 ft²). A ninth site may have been discovered in 1995 but has not been confirmed in recent years.

Historic glade habitat has been affected by highway construction, residential development, conversion to pasture and cropland, widespread use of herbicide, overgrazing, and glauconite mining. However, the primary current threat to existing glade populations is the invasion of nonnative and weedy

shrubs and vines (primarily Macartney rose (*Rosa bracteata*) and Japanese honeysuckle (*Lonicera japonica*). All known sites are undergoing severe degradation by the incursion of nonnative shrubs and vines, which restrict both growth and reproduction of the gladeceess. Special funding allowed brushclearing to be carried out in 1995 at several white bladderpod sites (where gladeceess is also located). The project resulted in large increases in bladderpod numbers, and also resulted in the reappearance of gladeceess after a 10-year absence at one historic site, and a possible discovery at a second site. However, nonnative shrubs have again invaded these areas. More effective control measures, such as burning and selective herbicide use, need to be tested and monitored.

The small number of known sites also makes the gladeceess vulnerable to extreme natural disturbance events. A severe drought in 1999 and 2000 had a pronounced adverse effect on gladeceess reproduction. Prelisting efforts for the gladeceess include: The collection of seeds and placement in three State horticultural labs for possible reintroduction efforts, a Cooperative Agreement (now complete) with The Nature Conservancy of Texas, and development of a "Conservation Area Plan for the San Augustine Glades," which identifies the size and configuration of conservation units that will restore and maintain long-term viability of Weches communities. The next step is to secure adequate funding to initiate protection measures. Landowners of the Chapel Hill and Kardell sites are aware of the gladeceess and are maintaining current land-use conditions. Efforts to find additional sites, and management of known sites, should be the focus for this species. Due to the continuing overall high magnitude and immediacy of the threats, we retain a listing priority number of 2 for the Texas golden gladeceess.

Lesquerella globosa (Desvaux) Watson (Short's bladderpod)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Short's bladderpod occurs in Indiana, Kentucky, and Tennessee. The species is closely associated with outcrops of calcareous rock and is found on steep, rocky, wooded slopes and talus areas, and along cliff tops and bases and cliff ledges. Historically, there were at least 57 sites supporting Short's bladderpod. Of these 57 sites, only 33 are currently extant. All remaining populations are small and vulnerable to extirpation.

Populations vary in size from 2 to about 1,500 individuals; most contain fewer than 50 plants. Road construction and road maintenance have played a significant role in the decline of the species. These activities continue to pose threats to the continued existence of most populations. Impoundments and artificial water level manipulation threatened and, in some cases, have destroyed sites supporting the species. Many of the Short's bladderpod locations are adjacent to rivers and streams, and impoundment and water level manipulation still threaten the species. Invasive nonnative vegetation is a significant threat at most sites. Most of the sites (91 percent) for this species are under private ownership or within the rights-of-way of State and county roads. Of the other sites, two of the Tennessee sites are on lands managed by the U.S. Army Corps of Engineers, Nashville District. One Tennessee site is on State-owned lands. The Indiana site is on land owned and managed by The Nature Conservancy. The threats faced by these species continue to be significant (*i.e.*, high in magnitude); however, it is not anticipated that they will be subject to these threats in the immediate future (next 1–2 years). Therefore, we retain a listing priority of 5 for this species.

Lesquerella tuplashensis (White Bluffs bladder-pod)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. This is a low-growing, herbaceous, short-lived, perennial plant in the Brassicaceae (mustard) family. Specimens of White Bluffs bladder-pod were first collected in 1883, although they were not taxonomically identified at the time. The same population was rediscovered in 1994 and formally described as a distinct species in 1996. Historically and currently, White Bluffs bladder-pod has only been known from this single population that occurs along the White Bluffs of the Columbia River in Franklin County, Washington. The species has a discontinuous distribution along a narrow band, approximately 33 feet (10 meters) wide by 10.6 miles (17 kilometers) long, at the upper edge of the bluffs. The species occurs on cemented, highly alkaline, calcium carbonate, paleosol (a "caliche" soil). Eighty-five percent of the population is on Federal land within the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, which is jointly managed by the Service and U.S. Department of Energy. The balance of the species' distribution is on adjacent private land. White Bluffs bladder-pod is vulnerable to localized

impacts because of its extremely limited distribution and specific habitat requirements. Water seepage from adjacent, up-slope agricultural irrigation causes mass failures and landslides throughout the length of the White Bluffs. Approximately 35 percent of the species' known range has been moderately to severely impacted by landslides. All mass-failures occurring along the White Bluffs, with one exception, are found in association with water seepage. Water, particularly water from irrigated agriculture adjacent to the bluffs, is the primary factor triggering the mass-failures. The entire population of *Lesquerella tuplashensis* is down-slope of irrigated agricultural land, and is at risk of landslides induced by water-seepage. The threat is greater in the southern portion of the species distribution where irrigated agriculture is closest, and in several locations directly adjacent to, the bluffs. Other threats to White Bluffs bladder-pod include direct damage of plants by off-road vehicles and recreational activities (*e.g.*, hiking, bicycling, wildflower collecting). Based on the available information, the magnitude of threats to White Bluffs bladder-pod continue to be high while these identified threats are nonimminent. Thus, we retain a listing priority of 5 for this species.

Linum arenicola (Sand flax)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This wiry, yellow-flowered perennial herb with linear leaves is found in tropical pinelands on limestone rock (pine rockland), marl prairie, and disturbed areas on limestone. These habitats are maintained by periodic fires that control shrubs and remove leaf litter. Sand flax is currently known from four sites in Miami-Dade County, Florida: Camp Owaissa Bauer (owned by Miami-Dade County), a private preserve, the Luis Martinez U.S. Army Reserve Station Richmond Pine Rocklands (managed by Miami-Dade County), and Homestead Bayfront Park (on a limestone canal levee). In Monroe County (the Florida Keys), it is present on Big Pine Key (National Key Deer Refuge; the Terrestrial Preserve, operated by The Nature Conservancy; and on private land). It is also present in the Sugarloaf Hammocks of Florida Keys Wildlife and Environmental Area on Sugarloaf Key, operated by the Florida Fish and Wildlife Conservation Commission. The total population is about 10,000 plants, with 1,000 to 3,000 occurring in completely artificial environments. The only population exceeding 1,000 plants

is believed to be the one on Big Pine Key. The small sizes of the existing populations and ongoing threats from exotic pest plants continue to create a serious risk of extinction for this species. Therefore, we retain a listing priority number of 2 for the sand flax.

Linum carteri var. *carteri* (Carter's small-flowered flax)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. Carter's small-flowered flax is found only on the Miami Rock Ridge in Miami-Dade County, Florida. It is an erect, annual, or short-lived perennial herb, often with several stems roughly 1 foot tall. Fewer than 1,000 individuals were estimated to exist as of 1999. About that time, a population disappeared from the Deering Estate at Cutler, a county-managed conservation tract. Carter's small-flowered flax is currently known from three occurrences on conservation lands and perhaps six other locations. It is protected at three conservation areas owned by Miami-Dade County: Camp Owaissa Bauer, R. Hardy Matheson Preserve, and Rockdale Pineland. It is present at the U.S. Department of Agriculture's Subtropical Horticulture Research Station (Chapman Field). It was reported from Homestead Air Reserve Base, but we do not have recent confirmation that it is still present there. It is also present at three privately owned locations. Residential and commercial development and agriculture have substantially reduced the habitat for this plant, which now exists in such small numbers that it is highly vulnerable. Based on imminent threats that continue to be of a high magnitude, we retain a listing priority number of 3 for Carter's small-flowered flax.

Lysimachia daphnoides (Lehua makanoë)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Melicope christophersenii (Alani)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Melicope degeneri (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope degeneri* is a small, long-lived perennial shrub found in mesic to wet forest on Kauai, Hawaii. *Melicope degeneri* was thought to be extinct,

having only been collected from the type location along Kokee Stream on the island of Kauai. Ten individuals of this species were rediscovered in Hanakoa Valley in 1993, at a site 4 mi (6 km) from the type location, one individual in Koaie Canyon, and one individual at Pohakuao. Since then, three additional plants were found in Hanakoa Valley, bringing the total number of individuals to 15. This species is threatened by feral goats, nonnative plants, the black twig borer, reduced reproductive vigor, and extinction due to naturally occurring random events. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Melicope hiiakae (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope hiiakae* is a small tree found in mesic to wet forest and shrubland on Oahu, Hawaii. Currently, *M. hiiakae* is known from four or five populations of about 20 individuals in the Koolau Mountains. This species is threatened by feral pigs that eat this plant and degrade and/or destroy its habitat, nonnative plants that outcompete it, and the black twig borer that potentially preys upon it. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Melicope makahae (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope makahae* is a shrub or shrubby tree found in mesic forest on Oahu, Hawaii. *Melicope makahae* was historically found throughout the central Waianae Mountains. Currently *M. makahae* is known from three populations on three discrete ridges, totaling approximately 200 individuals. This species is threatened by goats that eat this plant and degrade and/or destroy habitat, nonnative plants that outcompete it, and the black twig borer that potentially preys upon it. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2.

Melicope paniculata (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope paniculata* is a small tree found in wet forest dominated by *Metrosideros polymorpha* on Kauai, Hawaii. Historically known from four scattered populations within central Kauai, *M. paniculata* is currently known

from four populations totaling 110 individuals. This species is threatened by feral pigs that eat this plant and degrade and/or destroy habitat, nonnative plants that outcompete it, and the black twig borer that potentially preys upon it. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Melicope puberula (Alani)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Myrsine fosbergii (Kolea)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Myrsine mezii (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Myrsine mezii* is a small many-branched tree found in mesic forest on Kauai, Hawaii. This recently rediscovered species is known from two populations of only five individuals in Koaie Canyon. This species is threatened by feral pigs that eat this plant and degrade and/or destroy habitat, reduced reproductive vigor, and by extinction due to naturally occurring events (e.g. hurricanes and landslides). Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Myrsine vaccinioides (Kolea)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Narthecium americanum (Bog asphodel)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Bog asphodel is a perennial herb that is found in savannah areas, usually with water moving through the substrate, as well as in sandy bogs along streams and rivers. The historic range of bog asphodel included New York, New Jersey, Delaware, North Carolina, and South Carolina, but is now only found within the Pine Barrens region of New Jersey.

As an obligate wetland species, *N. americanum* is threatened by changes in hydrology, loss of habitat due to filling

or draining of wetlands, flooding as a result of reservoir construction, and conversion of natural wetlands to commercial cranberry bogs. This species occurs in the Pine Barrens region, and the Pinelands Commission issues the State-assumed Clean Water Act Section 404 permits. The Pinelands Commission grants wetland exemptions to cranberry production and other agricultural uses. Illegal wetland filling is occurring. For example, a cranberry expansion was illegally completed without a State permit. In addition, activities not needing State or federal permits are occurring in uplands that are indirectly affecting the wetlands. Natural succession of vegetation in wetlands supporting bog asphodel from emergent (herbaceous) to forested wetlands may also be contributing to the species' decline. Suppression of natural wildfires that would retard succession or create open wetland savannahs may be a factor in the decline of the species.

Other factors adversely affecting *N. americanum* include trampling, erosion, and siltation caused by recreationists on foot or using off-road vehicles. Approximately 70 percent of known extant populations occur on State-owned lands. We are working with the New Jersey Department of Environmental Protection to abate known moderate threats at these sites from recreational use and erosion. Approximately 30 percent of the known extant sites are on privately owned lands, many of which are threatened by habitat degradation from on-site or adjacent residential or commercial development. Overall, based on these imminent, moderate threats, we retain a listing priority number of 8 for this species.

Nothoecstrum latifolium (Aiea)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Ochrosia haleakalae (Holei)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Holei is a tree found often on lava in dry-to-mesic forest on the islands of Hawaii and Maui, Hawaii. This species is currently known from three populations totaling 150 to 250 individuals on east Maui and the island of Hawaii. This species is threatened by feral pigs, goats, and cattle that eat this plant and degrade and/or destroy habitat, nonnative plants that outcompete it, and fire. Because the threats continue to be of a high

magnitude and are imminent, we retain a listing priority number of 2 for this species.

Paronychia congesta (Bushy whitlow-wort)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Bushy whitlow-wort is endemic to Jim Hogg County, Texas. The species is known from only two population sites, which occur within 2 miles of each other, and within the drainage of two tributaries of the Arroyo Grande. The bushy whitlow-wort was historically known only from the type locality where 2,000 individual plants were documented. In 1987, a second small population of 100 individuals was found 2 miles north-northeast of the type locality. The limited available data suggest that the current range and distribution of the species has not changed from the historical information described above. The two known populations occur on small areas that cover approximately 5 and 15 acres; whether populations have expanded or contracted is unknown.

Threats include destruction, modification, and fragmentation of habitat, as well as eradication of individual plants. Destruction of habitat due to the conversion of rangeland to residential development is considered not imminent, nor of high magnitude since this part of southern Texas is not undergoing rapid residential or industrial development. The alteration of whitlow-wort habitat by brush clearing and replanting to nonnative forage grasses may be declining, as this type of land conversion has fallen out of favor across many parts of the Rio Grande Plains as wildlife-related income has gained importance in the regional economy. Currently, the bushy whitlow-wort is primarily threatened by the displacement or destruction of individual plants by construction activities associated with highways, pipeline installation, oil and gas exploration, and well-pad construction. Right-of-way maintenance activities may also have negative effects on the species, and both bushy whitlow-wort populations are dissected by rights-of-way. At this time, we do not know the status of oil and gas exploration and production activities in this area, nor do we have information on right-of-way maintenance. With regard to highway construction and maintenance, the closest highway is a Farm/Ranch road that has not been expanded or rebuilt recently.

The lack of imminent threats to this plant from habitat conversion is born out by observations that land use has

not changed in this area in the past 10 years. No imminent threats have been identified for this species. All habitats are located on private land, which continues to be used for ranching. We do not have any information to indicate that a high level of disturbance has occurred as a result of these activities; however, access to the property has been discouraged. Thus, based on nonimminent threats that continue to be of a moderate-to-low magnitude, we retain a listing priority number for this species is 11.

Pediocactus peeblesianus var. *fickeiseniae* (Fickeisen plains cactus)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Fickeisen plains cactus is a small cactus known from the Gray Mountain vicinity to the Arizona Strip in Coconino and Mohave Counties, Arizona. The cactus grows on exposed layers of Kaibab limestone on canyon margins and well-drained hills in Navajoan desert or grasslands. In 1998, the Arizona Game and Fish Department noted 23 element occurrences for the species, including historical ones. Specific population sizes are unavailable, because demographic monitoring does not include individual plant counts and the species tends to shrink into the ground during times of drought, making accurate counts difficult. The major potential human-induced threats to this cactus are damage by off-road vehicles and trampling associated with livestock grazing. While this cactus is protected from collection by the Arizona Native Plant Law, illegal collection is also a threat for species in the genus *Pediocactus*. Because of the continuing high magnitude of nonimminent threats, we retain a listing priority number of 6.

Penstemon debilis (Parachute beardtongue)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Penstemon grahamii (Graham beardtongue)—The following summary is based on information contained in our files and the petition received on October 8, 2002. *Penstemon grahamii* is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. The species population is estimated at about 7,000 individuals with 36 known occurrences. Most of the occupied habitat of *P. grahamii* is within developed and expanding oil

and gas fields with several wells and access roads within the species' occupied habitat. The location of *P. grahamii* habitat exposes it to possibility of habitat destruction from off-road vehicle use, as well as road, pipeline, and well-site construction in connection with oil and gas development. Collection of plants and seeds is a significant threat due to the actions of rock-garden enthusiasts to obtain this very attractive plant. The species is heavily grazed by wildlife (rodents, rabbits, and possibly deer) and by livestock (primarily sheep). Livestock trampling is affecting some populations. The threats associated with oil and gas development within the habitat of *P. grahamii* are imminent in light of the increased seismic survey and petroleum leasing. Therefore, we retain a listing priority number of 2 for this species because the threats continue to be of high magnitude, and are imminent.

Penstemon scariosus var. *albifluvis* (White River beardtongue)—The following summary is based on information contained in our files and the petition received on October 27, 1983. The White River beardtongue is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. There are three known populations. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. The location of the species' habitat exposes it to destruction from ORV use, and road, pipeline, and well-site construction in connection with oil and gas development. With such a small population and limited occupied habitat, any substantial destruction, modification, or curtailment of the habitat could have a highly negative impact on the species. Additionally, the species is heavily grazed by wildlife and livestock and is vulnerable to livestock trampling. Based on current information, we are retaining the listing priority number of 6.

Peperomia subpetiolata (Ala ala wai nui)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Ala ala wai nui is a short-lived perennial herb found in mesic forest on Maui, Hawaii. This species is known from a few scattered and declining populations on windward east Maui, totaling 100 individuals. Further study of the population indicates that the 100 individuals may actually represent clones of only 6 genetically distinct individuals. This species is threatened by feral pigs that eat this plant and

degrade and/or destroy habitat, and by nonnative plants. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Phacelia submutica (DeBeque phacelia)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Phyllostegia bracteata (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Phyllostegia bracteata* is a scandent (climbing) perennial herb. Apparently rare and endemic to the island of Maui, *P. bracteata* is known from three populations totaling no more than 100 individuals in wet forest habitat of east Maui. This species is threatened by feral pigs that eat this plant and degrade and/or destroy habitat, nonnative plants that compete for light and nutrients, and reduced reproductive vigor and extinction from naturally occurring events due to small population sizes. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Phyllostegia floribunda (no common name)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Phyllostegia hispida (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Phyllostegia hispida* is a loosely spreading many-branched vine found in wet forest on Molokai, Hawaii. The historic range of this species was eastern Molokai. Currently, *P. hispida* is known from only two plants, one in The Nature Conservancy's Kamakou Preserve and one in Puu Alii Natural Area Reserve. This species is threatened by feral pigs that eat this plant and degrade and/or destroy habitat, erosion, reduced reproductive vigor, and extinction due to naturally occurring events. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Pittosporum napaliense (Hoawa)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new

information was provided in the petition received on May 11, 2004.

Platanthera integrilabia (Correll) Leur (White fringeless orchid)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. White fringeless orchid occurs in Alabama, Georgia, Kentucky, South Carolina, and Tennessee. Historically, it also occurred in Georgia, Mississippi, North Carolina, and Virginia. It grows in wet, boggy areas at the head of streams and on seepage slopes. It is often associated with *Sphagnum* in partially, but not fully, shaded areas. Historically, there were at least 90 populations of white fringeless orchid. Currently there are only 53 extant sites supporting the species. Threats to the species include habitat modification activities such as road construction, all-terrain vehicles, residential and commercial construction, and soil and site hydrology altering projects that reduce site suitability for the species. Timber management is not necessarily incompatible with the protection and management of white fringeless orchid. However, care must be taken during timber management to ensure that the hydrology of the bogs that support the species is not altered, that any heavy equipment used is kept out of the species' habitat, and that the vegetation is managed in a manner that maintains suitable light and moisture conditions. Collecting for commercial and other purposes, herbivory, and disease all threatened this species. Invasive nonnative plants threaten several sites. The threats faced by this species are significant; however, it is not anticipated that it be subject to these threats in the immediate future (next 1–2 years). Therefore we retain a listing priority of 5 for this species.

Platydesma cornuta var. *cornuta* (no common name)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Platydesma cornuta var. *decurrens* (no common name)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Platydesma remyi (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11,

2004. *Platydesma remyi* is a shrub or shrubby tree found scattered in wet, low statured forest on the island of Hawaii, Hawaii. This species is known from two populations (one each in the Kohala Mountains and Hamakua) totaling less than 100 individuals. This species is threatened by feral pigs and cattle, nonnative plants, and reduced reproductive vigor and extinction from naturally occurring events due to small population sizes. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Platydesma rostrata (Pilo kea lau lii)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Pleomele forbesii (Hala pepe)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Potentilla basaltica (Soldier Meadow cinquefoil or basalt cinquefoil)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Soldier Meadow cinquefoil is a low-growing, rhizomatous, herbaceous perennial that is associated with alkali meadows, seeps, and occasionally marsh habitats bordering perennial thermal springs, outflows, and meadow depressions. In Humboldt County, Nevada, the species is known only from Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province. In northeastern California, the species is known from Ash Valley near Ash Creek in Lassen County. In Nevada, Soldier Meadow cinquefoil has been documented from 10 discrete occurrences within an area of about 70 acres that supports about 130,000 individuals. On private lands, the population occupies less than an acre and supports fewer than 1,000 plants. The species and its habitat are threatened by increasing recreational use in the areas where the species occurs, livestock grazing, and activities associated with the use of authorized and unauthorized roads. Despite the relatively high number of individuals observed and the apparently stable population trend, concern over increasing and intense recreational use

has prompted the Service to maintain the magnitude of threats to the species as high. However, the threats to Soldier Meadow cinquefoil from various land uses are currently considered nonimminent because of the commitments to conservation made by the BLM through implementation of a regional resource management plan. Based on this information, we are maintaining a listing priority number of 5.

Pritchardia hardyi (Loulou)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Pseudognaphalium (*Gnaphalium*) *sandwicensium* var. *molokaiense* (Enaena)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Psychotria grandiflora (Kopiko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Psychotria grandiflora is a small tree or shrub found in mesic to sometimes wet forest on Kauai, Hawaii. This species is found only in the Kokee area on the island of Kauai. The historic range of this species was throughout Kauai's mesic and wet forests. While there are no historic records of numbers of populations or individuals, qualitative accounts indicate that the species was relatively widespread and abundant. Mesic and wet forest habitats have been significantly degraded by human activities and natural events. Recent surveys show that the species is now limited to four populations, totaling 18 individuals. This species is highly threatened by feral pigs and goats that eat this plant and degrade and/or destroy habitat, and nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Psychotria hexandra var. *oahuensis* (Kopiko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Psychotria hexandra* var. *oahuensis* is a tree or shrub found in mesic and wet forests on Oahu, Hawaii. This subspecies is known from three populations of eight individuals of the variety *oahuensis*. The other varieties of this subspecies, *hoskana* and *rockii*, are

extinct. The historic range of this subspecies was throughout the mesic and wet forests on the island of Oahu. While there are no historic records of numbers of populations or individuals, mesic and wet forests were once abundant on Oahu and it is assumed that the subspecies was relatively widespread. This species is now restricted to the Koolau Mountains. This species is threatened by feral pigs that eat it and degrade and/or destroy habitat, and by nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 3 for this plant variety.

Psychotria hobdyi (Kopiko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Psychotria hobdyi* is a tree found in mesic forest habitat on Kauai, Hawaii. This species is known from three populations totaling approximately 85 individuals. This species is threatened by feral goats that eat this plant and degrade and/or destroy habitat, nonnative plants that compete for light and nutrients, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Pteralyxia macrocarpa (Kaulu)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Ranunculus hawaiiensis (Makou)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Ranunculus mauianus (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Ranunculus mauianus* is an erect to weakly ascending perennial herb found in open sites in mesic-to-wet forest and along streams on Maui and Kauai, Hawaii. *Ranunculus mauianus* was historically known from the islands of Hawaii, Maui, Molokai, Oahu, and Kauai. It is currently known from less than 30 individuals on Maui and 30 individuals on Kauai. This species is threatened by feral pigs and slugs that eat this plant and degrade and/or

destroy habitat, and by nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are ongoing and therefore imminent, we retain a listing priority number of 2.

Rorippa subumbellata (Tahoe yellow cress)—see resubmitted petition finding published in the **Federal Register** on December 27, 2004 (69 FR 77167).

Schiedea attenuata (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Schiedea attenuata* is an erect, sparingly branched shrub found on cliffs in diverse mesic forest habitat on Kauai, Hawaii. This recently discovered species is known from one population of less than 20 individuals on the cliffs of Kalalau Valley. This species is threatened by feral goats that eat this plant and degrade and/or destroy habitat, and by nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Schiedea pubescens (Maolioli)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Maolioli is a reclining or weakly climbing vine found in diverse mesic-to-wet forest on Maui and Molokai, Hawaii. *Schiedea pubescens* was historically found scattered in mesic-to-wet forest habitat on the islands of Molokai, Lanai, and Maui. Currently, this species, which is declining, is known from 6 populations totaling approximately 100 individuals on Maui and Molokai. This species is threatened by feral goats that eat this plant and degrade and/or destroy habitat, and by nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Schiedea salicaria (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Schiedea salicaria* is an erect subshrub or shrub found on ridges and steep slopes in dry shrubland on Maui, Hawaii. While there are no historic records of numbers of populations or individuals, qualitative accounts indicate that this species was not uncommon on west Maui. Currently, this species is declining throughout its range, and it is known from several populations totaling 100 to 300

individuals, typically of 25 individuals per population. This species is threatened by cattle that eat this plant and degrade and/or destroy habitat, fire, and nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Sedum eastwoodiae (Red Mountain stonecrop)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Red Mountain stonecrop is a perennial succulent which occupies relatively barren, rocky openings and cliffs in lower montane coniferous forests which occur between 1,900 and 4,000 feet. Its distribution is limited to Red Mountain, Mendocino County, California, where it occupies 30 ac scattered over 4 mi². Total population size is estimated as 5,300 to 23,000 plants, which occur in 27 polygons. Intensive monitoring suggests considerable annual variation in plant seedling success and inflorescence production; stonecrop density varied from year to year. The primary threat to the species is the potential for mining; the species distribution overlaps a number of mining claims, none of which are currently active. Surface mining, which would destroy all habitat suitability in affected areas, would be used to extract chromium and nickel. The species distribution by ownership is described as follows: Federal (Bureau of Land Management), 95 percent; and private, 5 percent. Given the magnitude (high) and immediacy (nonimminent) of the threat to the small, scattered populations, and its taxonomy (species), we retain a listing priority number of 5 for this species.

Sicyos macrophyllus (Anunu)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Sidalcea hickmanii ssp. *parishii* (Parish’s checkerbloom)—The following summary is based on information contained in our files and the petition received in 1975. Parish’s checkerbloom is known from San Bernardino, Santa Barbara, and San Luis Obispo counties in southern California. Two populations occur in San Bernardino County. No more than a dozen plants have been found in one of these populations in the last decade. Populations of this plant have been reduced by habitat loss from road construction, expansion of recreational and communication facilities; trampling from recreational

activities; and grazing impacts from cattle and wildlife. Fire suppression and alteration of natural fire regimes are also a potential threat to this plant. The first location is within a 2-hour drive of 14 million people and is popular with recreationalists. Recreational use and development in San Bernardino National Forest and adjacent private inholdings continues in a manner that is likely to preclude the opportunity to preserve existing plants and conduct prescribed burns to promote the persistence of this species. The second population of 4 individuals was recently discovered on the north slope of the San Bernardino Mountains the year following a fire. This location is a notably drier location than any of the others found to date and expands the model of what constitutes suitable habitat for the species. The populations in Santa Barbara and San Luis Obispo Counties are more remote from developed recreational areas. In these locations, opportunities still exist to conduct prescribed burns in a manner that would promote the persistence of this species. Because this portion of the species’ range is exposed to less severe threats, we conclude that the magnitude of threat to the species as a whole is moderate to low. Although we believe the threat to this species is higher in the southernmost portion of its range, the discovery of another population there and the potential broadening of what might be considered suitable habitat has slightly reduced the overall threat of extinction of the species. Additionally, we have new information indicating the threat situation of *Sidalcea hickmanii* ssp. *parishii* has improved in previous years. However, we have not yet completed our analysis of the current plant information, and consequently have not made a determination as to whether candidate status is still warranted in light of this new information. We expect to complete the analysis of the data within the next 12 months. Until we complete this analysis, we are retaining a listing priority number of 9 for this subspecies.

Solanum nelsonii (Popolo)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Stenogyne cranwelliae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Stenogyne cranwelliae* is a creeping vine found in wet forest dominated by *Metrosideros polymorpha*

on the island of Hawaii, Hawaii. *Stenogyne cranwelliae* is known from 6 populations of 100 individuals. Historically found in the Kohala Mountains, this species was thought to be extinct until rediscovered during surveys of the Kohala Mountains in 1995. This species is threatened by feral pigs and rats that eat this plant and degrade and/or destroy habitat, and nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Stenogyne kealiae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Stenogyne kealiae* is a trailing or scandent vine found in wet forest habitat on Kauai, Hawaii. This species is known from 5 populations totaling 100–200 individuals in the northwestern section of the island of Kauai. This species is threatened by feral pigs, goats and deer that eat this plant and degrade and/or destroy habitat, and by nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Symphyotrichum georgianum (Georgia aster)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Georgia aster is a relict species of post oak savanna/prairie communities that existed in the southeast prior to widespread fire suppression and extirpation of large native grazing animals. Most populations are small, and since the species' main mode of reproduction is vegetative, each isolated population probably represents just a few genotypes. Many populations are threatened by woody succession due to fire suppression, development, highway expansion/improvement, and herbicide application. Historically, 97 populations of Georgia aster were known to exist; 34 of these have apparently been destroyed. The species appears to have been eliminated from Florida, one of the five States in which it originally occurred. It remains in 31 counties in 4 States (North Carolina, South Carolina, Alabama, and Georgia). In most cases the exact cause of extirpation was not documented, but herbicides, highway construction, fire suppression, and residential and industrial development have all altered the historic landscape in which Georgia aster once flourished. Most remaining populations of this

species survive adjacent to roads, railroads, utility rights-of-way and other openings where land management mimics natural disturbance regimes. However, at these sites the species is inherently vulnerable to accidental destruction from herbicide application, road shoulder grading, and other maintenance activities. Many populations are threatened also by development (several are within planned residential subdivisions), highway expansion/improvement, and woody succession due to fire suppression. Two of the remaining populations are located adjacent to active quarries, which could eliminate the plants as the quarries expand. One population has been lost to competition with kudzu (*Pueraria lobata*), a nonnative plant. The threats faced by this species are significant; however, they continue to be nonimminent, leading to us to retain a listing priority number of 5 for this species.

Zanthoxylum oahuense (Ae)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Ae is small tree found in mesic-to-wet forest habitat on Oahu, Hawaii. The historic range of *Zanthoxylum oahuense* was throughout mesic or, rarely, wet forest in the Koolau Mountains on the island of Oahu. While there are no historic records of numbers of populations or individuals, qualitative accounts indicate that the species was not uncommon. Currently this species is known from several populations totaling approximately 500 individuals on Oahu. This species is threatened by feral pigs that eat this plant and degrade and/or destroy habitat, the nonnative two spotted leaf hopper that eats this plant species, and nonnative plants that compete for light and nutrients. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Ferns and Allies

Botrychium lineare (Slender moonwort)—The following summary is based on information contained in our files and the petition received on July 28, 1999. See also the 12-month petition finding published on June 6, 2002 (67 FR 39035). The slender moonwort is currently known from a total of 12 widely disjunct populations in 6 states: 3 in Colorado (El Paso and Lake Counties), 1 in Idaho (Custer County), 2 in Oregon (Wallowa County), 3 in Montana (Glacier County), 2 in Nevada (Clark County) and 1 in Washington (Ferry County). Historic populations,

previously known from Idaho (Boundary County), Montana (Lake County), California (Fresno County), Colorado (Boulder County), and Canada (Quebec and New Brunswick), have not been seen for several years and may be extirpated. The total number of individuals observed at the 12 extant population sites varies, with observations ranging from 2 to 162 individuals. Identifiable threats to various populations of this species include road maintenance activities, herbicide application, recreation, timber harvest, trampling, and development. The slender moonwort may also be affected by grazing from livestock or wildlife, but specific effects of grazing on the species are unknown. However, if grazing by livestock or wildlife species occurs prior to the maturation and release of spores, the capacity for sexual reproduction of affected plants may be compromised.

The slender moonwort is considered a sensitive species in Regions 2, 5, and 6 of the U.S. Forest Service, where National Forest system lands include extant and historical slender moonwort sites found in Colorado, Oregon, Washington, and California. Regional sensitive species lists fall under Forest Service policies that address land use planning and management with regard to sensitive species. Forest Service Regions 1 and 4, which include extant and historical sites found in Montana and Idaho, do not have slender moonwort on their regional sensitive species lists and it is, therefore, not given any special consideration by the Forest Service in those regions. Although the slender moonwort is considered to be rare and imperiled by the State Natural Heritage Programs in Colorado, Montana, Oregon, and Washington, the State Natural Heritage Program rankings are not legal designations and do not confer State regulatory protection to this species. Because the overall magnitude of threats to the slender moonwort throughout its range continues to moderate and the overall immediacy of these threats is nonimminent, we retain a listing priority number of 11.

Christella boydiae (no common name)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Doryopteris takeuchii (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Doryopteris takeuchii* is a small

fern found in dry shrubland and grassland on Oahu, Hawaii. This newly described species is found only on the island of Oahu on the slopes of Diamond Head Crater in one population totaling hundreds of individuals. It is suspected that this species evolved relatively recently and never had a wide historic distribution on Oahu, but the magnitude of the threats facing the species has increased dramatically. This species is threatened by nonnative plants, fire, trampling, and erosion, which degrade and/or destroy habitat. Because the threats continue to be of a high magnitude and are imminent, we retain a listing priority number of 2 for this species.

Huperzia stemmermanniae (no common name)—See above in “Other Taxonomic Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Microlepia strigosa var. *mauiensis* (no common name)—See above in “Summary of Listing Priority Changes in Candidates and Other Taxonomic Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Petitions To Reclassify Species Already Listed

We previously made warranted-but-precluded findings on five petitions seeking to reclassify threatened species to endangered status. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms also constitute the resubmitted petition findings for these species. We find that reclassification to endangered status for the species listed below is currently warranted but precluded by work identified above (see “Petition Findings for Candidate Species” above). In addition, these species are currently listed as threatened under the Act, and therefore they receive certain protections under the Act. The Service promulgated regulations extending take prohibitions for endangered species under section 9 to threatened species (50 CFR 17.31). Prohibited actions under section 9 include, but are not limited to, take (*i.e.*, harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity). Other protections include those under section 7(a)(2) of the Act whereby Federal agencies must insure that any action they authorize, fund, or carry out

is not likely to jeopardize the continued existence of any endangered or threatened species.

(1) North Cascades ecosystem population of the grizzly bear (*Ursus arctos horribilis*) (Region 6) (also see 63 FR 30453, June 4, 1998, and the species assessment form (see ADDRESSES) for additional information on why reclassification to endangered is warranted-but-precluded)—Current grizzly bear distribution has been reduced to 5 areas in the western United States, including the North Cascades in north central Washington. Populations are estimated to be fewer than 20 animals within the 9,500-square-mile (sq-mi) (25,000-square-kilometer (sq-km)) North Cascades recovery zone. Threats to the species in this recovery zone include incomplete habitat protection measures (motorized access management) and small population size and population fragmentation that produce genetic isolation. We assigned a listing priority number of 3 for this population because of very low population numbers as evidenced by continuing lack of credible sightings and little success identifying animals through hair snagging and genetic analysis. Information indicating isolation of the population in British Columbia and the United States limits the chance of natural recovery given the small population size. Population augmentation may be the only way to recover this population.

(2) Cabinet-Yaak population of the grizzly bear (Region 6) (see also 64 FR 26725, May 17, 1999, and the species assessment form (see ADDRESSES) for additional information on why reclassification to endangered is warranted-but-precluded)—Current grizzly bear distribution has been reduced to 5 areas in the western United States, including the Cabinet-Yaak in northern Idaho and northwest Montana. Populations are estimated to be 30–40 animals within the 2,600-sq-mi (6,700-sq-km) Cabinet-Yaak recovery zone. Threats to the species in this recovery zone include incomplete habitat protection measures in the form of motorized access management, overutilization by human-caused mortality, and small population size and population fragmentation that produce genetic isolation. We assign a listing priority number of 3 to this population due to continuing high levels of human-caused mortality, new threats to habitat in the form of large scale mine development proposals in the Cabinet Mountains, and the high potential for further fragmentation of populations within the recovery zone.

(3) Selkirk grizzly population of the grizzly bear (Region 6) (see also 64 FR 26725, May 17, 1999, and the species assessment form (see ADDRESSES) for additional information on why reclassification is warranted-but-precluded)—Current grizzly bear distribution has been reduced to 5 areas in the western United States, including the Selkirk Mountains in northern Idaho, northeast Washington, and Southeast British Columbia. Populations are estimated to be 40–50 animals within the 2,200 mi² (5,700 km²) Selkirk Mountains recovery zone. Threats to the species in this recovery zone include incomplete habitat protection measures in the form of motorized access management, overutilization in the form of human-caused mortality, and small population size and population fragmentation that produce genetic isolation. We assign a listing priority number of 3 to this population because of continuing high levels of human-caused mortality in British Columbia and new genetic information indicating the population is isolated and has declined in genetic diversity relative to both adjacent populations.

(4) Spikedace (*Meda fulgida*) (Region 2) (see 59 FR 35303, July 11, 1994, and the species assessment form (see ADDRESSES) for additional information on why reclassification to endangered is warranted-but-precluded)—The spikedace, a small fish species in a monotypic genus, is found in moderate-to-large perennial waters, where it inhabits shallow riffles with sand, gravel, and rubble substrates, and moderate-to-swift currents and swift pools over sand or gravel substrates. Specific habitat for this species consists of shear zones where rapid flow borders slower flow; areas of sheet flow at the upper ends of mid-channel sand/gravel bars; and eddies at downstream riffle edges. Recurrent flooding and a natural hydrograph are very important in maintaining the habitat of spikedace and in helping maintain a competitive edge over invading nonnative aquatic species.

The spikedace was once common throughout much of the Gila River basin, but it is now restricted to approximately 466 km (289 mi) of stream in portions of the upper Gila River (Grant, Catron, and Hidalgo Counties, NM); middle Gila River (Pinal County, AZ); lower San Pedro River (Pinal County, AZ); Aravaipa Creek (Graham and Pinal Counties, AZ); Eagle Creek (Graham and Greenlee Counties, AZ); and the Verde River (Yavapai County, AZ). Its present range is only about 10 to 15 percent of the historic range, and the status of the species

within occupied areas ranges from common to very rare. The species is now common only in Aravaipa Creek in Arizona and some parts of the upper Gila River in New Mexico. The reduction in the historical distribution of spikedace is largely attributable to the continued modification of its habitat and continued interactions with nonnative species. These threats occur over the majority of their range, to varying degrees. Each of the individual spikedace complexes may face unique threats as well. For example, the San Pedro River area is experiencing groundwater depletion which is affecting surface flows within the river channel, whereas Tonto Creek faces continued grazing pressure, recreational use, and dewatering due to diversions. Proposals have been made for water exchanges affecting the Verde River in order to provide water for growing urban areas. Currently, threats are exacerbated by the ongoing drought. While some areas are subjected to fewer disturbances or pressures, there are no known habitat areas that are completely free of disturbance. Effects from nonnative species introductions are permanent, unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Grazing pressures have eased somewhat as Federal agencies remove cattle from streams directly, but upland conditions continue to degrade watersheds in general. Groundwater withdrawals or exchanges that affect streamflow are not reversible. Because these high magnitude threats have gone on for many years in the past, are associated with irreversible commitments (*i.e.*, water exchanges), or are not easily reversed (*i.e.*, nonnative stocking and impacts from grazing), the threats are imminent. Therefore, we assign this species a listing priority of 1 for uplisting to endangered.

(5) Loach minnow (*Tiaroga cobitis*) (Region 2) (*see* 59 FR 35303, July 11, 1994, and the species assessment form (*see* ADDRESSES) for additional information on why reclassification to endangered is warranted-but-precluded)—This small fish, the only species within the genus, is found in small-to-large perennial streams and uses shallow, turbulent riffles with primarily cobble substrate and swift currents. The loach minnow uses the spaces between, and in the lee of, larger substrate for resting and spawning. It is rare or absent from habitats where fine sediments fill the interstitial spaces. Recurrent flooding and a natural hydrograph are very important in maintaining the habitat of loach

minnow and in helping the species maintain a competitive edge over invading nonnative aquatic species.

The loach minnow was once locally common throughout much of the Gila River basin, including the mainstem Gila River upstream of Phoenix, and the Verde, Salt, San Pedro, and San Francisco subbasins. The present range is only 15 to 20 percent of its historic range, and the status of the species within occupied areas ranges from common to rare. The species is now common only in Aravaipa Creek and the Blue River in Arizona, and limited portions of the San Francisco, upper Gila, and Tularosa rivers in New Mexico. The reduction in the historical distribution of loach minnow is largely attributable to the continued modification of its habitat and continued interactions with nonnative species. These threats occur over the majority of the range, to varying degrees. Each of the individual loach minnow complexes may face unique threats as well. For example, the San Pedro River area is experiencing groundwater depletion which is affecting surface flows within the river channel, whereas Tonto Creek faces continued grazing pressure, recreational use, and dewatering due to diversions. Proposals have been made for water exchanges affecting the Verde River in order to provide water for growing urban areas. Currently, threats are exacerbated by the ongoing drought. While some areas are subjected to fewer disturbances or pressures, there are no known habitat areas that are completely free of disturbance. Effects from nonnative species introductions are permanent unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Grazing pressures have eased somewhat as Federal agencies remove cattle from streams directly, but upland conditions continue to degrade watersheds in general. Groundwater withdrawals or exchanges that affect streamflow are not reversible. Most of these high-magnitude threats to the loach minnow are already ongoing, in particular grazing, water withdrawals, nonnative stocking programs, recreational use, and drought. Because threats have gone on for many years in the past, are associated with irreversible commitments (*i.e.*, water exchanges), or are not easily reversed (*i.e.*, nonnative stocking and impacts from grazing), the threats are imminent. Therefore, we assign this species a listing priority number of 1 for uplisting to endangered.

Current Notice of Review

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants and DPSs of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 list animals arranged alphabetically by common names under the major group headings and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Plants are subdivided into two groups: (1) Flowering plants and (2) ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an “equals” sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by “sp.” or “ssp.” We incorporate standardized common names in these notices as they become available. We sorted plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species and all species proposed for listing under the Act. We emphasize that we are not proposing these candidate species for listing by this notice, but we anticipate developing and publishing proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

In Table 1, the “category” column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for

which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher-priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. We made new findings on all petitions for which we previously made “warranted-but-precluded” findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code “C*” in the category column (see “Findings on Resubmitted Petitions” section for additional information). We identify the species for which we are not making a “warranted-but-precluded” finding on a resubmitted petition by the code “C+” in the category column. We have not updated our finding with regard to these species since we have received important new information that we are currently analyzing.

The “Priority” column indicates the listing priority number (LPN) for each candidate species which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

The third column, “Lead Region,” identifies the Regional Office to which you should direct comments or questions (see **ADDRESSES** at the end of the **SUPPLEMENTARY INFORMATION** section).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are species we included either as proposed

species or as candidates in the previous CNOR (published May 4, 2004). Since May 4, 2004, we added two of these species to the Lists of Endangered and Threatened Wildlife and Plants, withdrew one species from proposed status, and removed five species from candidate status for the reasons indicated by the codes. The first column indicates the present status of the species, using the following codes (not all of these codes may have been used in this CNOR):

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list because currently available information does not support a proposed listing.

Rp—Species we removed from the candidate list because we have withdrawn the proposed listing.

The second column indicates why we no longer regard the species as a candidate or proposed species using the following codes (not all of these codes may have been used in this CNOR):

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuing candidate status, or issuing a proposed or final listing. The reduction in threats could be due, in part or entirely, to actions taken under a conservation agreement.

F—Species whose range no longer includes a U.S. territory.

I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M—Species we mistakenly included as candidates or proposed species in the last notice of review.

N—Species that are not listable entities based on the Act’s definition of “species” and current taxonomic understanding.

X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; and

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit your comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (503/231-6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87102 (505/248-6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056 (612/713-5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679-4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589 (413/253-8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486 (303/236-7400).

Region 7. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503-6199 (907/786-3505).

We provided comments received in response to the previous CNOR to the Region having lead responsibility for each candidate species mentioned in the comment. We will likewise consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing pursuant to section 4(b)(7) of the Act is appropriate). Comments we receive will become part of the administrative record

for the species, which we maintain at the appropriate Regional Office.

Our practice is to make comments, including names and home addresses of respondents, available for public inspection. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. In some circumstances, we can also withhold from the public record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous

comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 2, 2005.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

[Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Commom name	Historic range
Category	Priority					
Mammals						
C*	3	R1	<i>Emballonura semicaudata rotensis.</i>	Emballonuridae	Bat, Pacific sheath-tailed ...	U.S.A. (GU, CNMI).
C*	3	R1	<i>Emballonura semicaudata semicaudata.</i>	Emballonuridae	Bat, Pacific sheath-tailed ...	U.S.A. (AS), Fiji, Inde- pendent Samoa, Tonga, Vanuatu.
C*	6	R1	<i>Martes pennanti</i>	Mustelidae	Fisher (west coast DPS)	U.S.A. (CA, CT, IA, ID, IL, IN, KY, MA, MD, ME, MI, MN, MT, ND, NH, NJ, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA, WI, WV, WY), Canada.
PT	3	R7	<i>Enhydra lutris kenyoni</i>	Mustelidae	Otter, Northern Sea (south- west Alaska DPS).	Species range: Pacific Rim coastal waters, from Northern Japan to Baja, Mexico.
C*	3	R1	<i>Thomomys mazama couchi</i>	Geomyidae	Pocket gopher, Mazama (Shelton).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama glacialis.</i>	Geomyidae	Pocket gopher, Mazama (Roy Prairie).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama louiei</i> ..	Geomyidae	Pocket gopher, Mazama (Cathlamet).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama melanops.</i>	Geomyidae	Pocket gopher, Mazama (Olympic).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama pugetensis.</i>	Geomyidae	Pocket gopher, Mazama (Olympia).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama tacomensis.</i>	Geomyidae	Pocket gopher, Mazama (Tacoma).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama tumuli</i>	Geomyidae	Pocket gopher, Mazama (Tenino).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama yelmensis.</i>	Geomyidae	Pocket gopher, Mazama (Yelm).	U.S.A. (WA).
C*	3	R1	<i>Spermophilus tereticaudus chlorus.</i>	Sciuridae	Squirrel, Palm Springs (=Coachella Valley) round-tailed ground.	U.S.A. (CA).
C*	9	R1	<i>Spermophilus brunneus endemicus.</i>	Sciuridae	Squirrel, Southern Idaho ground.	U.S.A. (ID).
C*	5	R1	<i>Spermophilus washingtoni</i> ..	Sciuridae	Squirrel, Washington ground	U.S.A. (WA, OR).
Birds						
C*	3	R1	<i>Porzana tabuensis</i>	Rallidae	Crake, spotless (American Samoa DPS).	U.S.A. (AS), Australia, Fiji, Independent Samoa, Mar- quesas, Philippines, Soci- ety Islands, Tonga.
C*	2	R1	<i>Oreomystis bairdi</i>	Fringillidae	Creeper, Kauai	U.S.A. (HI).
C*	3	R1	<i>Coccyzus americanus</i>	Cuculidae	Cuckoo, yellow-billed (West- ern U.S. DPS).	U.S.A. (Lower 48 States), Canada, Mexico, Central and South America.
C*	12	R1	<i>Ptilinopus perousii perousii</i>	Columbidae	Fruit-dove, many-colored ...	U.S.A. (AS), Independent Samoa.
C*	6	R1	<i>Gallicolumba stairi stairi</i>	Columbidae	Ground-dove, friendly	U.S.A. (AS), Independent Samoa.
C*	6	R1	<i>Eremophila alpestris strigata</i>	Alaudidae	Horned lark, streaked	U.S.A. (OR, WA), Canada (BC).
C*	5	R7	<i>Brachyramphus brevirostris</i>	Alcidae	Murrelet, Kittlitz's	U.S.A. (AK), Russia.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
 [Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	2	R1	<i>Synthliboramphus hypoleucus</i>	Alcidae	Murrelet, Xantus's	U.S.A. (CA), Mexico.
C*	8	R2	<i>Tympanuchus pallidicinctus</i>	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX).
C+	6	R1	<i>Centrocercus urophasianus</i>	Phasianidae	Sage-grouse, greater (Columbia Basin DPS).	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).
C*	2	R6	<i>Centrocercus minimus</i>	Phasianidae	Sage-grouse, Gunnison	U.S.A. (AZ, CO, KS, OK, NM, UT).
C*	3	R1	<i>Oceanodroma castro</i>	Hydrobatidae	Storm-petrel, band-rumped (Hawaii DPS).	U.S.A. (HI), Atlantic Ocean, Ecuador (Galapagos Islands), Japan.
C*	5	R4	<i>Dendroica angelae</i>	Emberizidae	Warbler, elfin woods	U.S.A. (PR).
REPTILES						
C*	2	R2	<i>Sceloporus arenicolus</i>	Iguanidae	Lizard, sand dune	U.S.A. (TX, NM).
C*	9	R3	<i>Sistrurus catenatus catenatus</i>	Viperidae	Massasauga (= rattlesnake), eastern.	U.S.A. (IA, IL, IN, MI, MO, MN, NY, OH, PA, WI), Canada.
C*	6	R4	<i>Pituophis melanoleucus lodingi</i>	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS).
C*	5	R4	<i>Pituophis ruthveni</i>	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX).
C*	5	R2	<i>Graptemys caglei</i>	Emydidae	Turtle, Cagle's map	U.S.A. (TX).
C*	3	R2	<i>Kinosternon sonoriense longifemorale</i>	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico.
Amphibians						
C*	3	R1	<i>Rana luteiventris</i>	Ranidae	Frog, Columbia spotted (Great Basin DPS).	U.S.A. (AK, ID, MT, NV, OR, UT, WA, WY), Canada (BC).
C*	3	R1	<i>Rana muscosa</i>	Ranidae	Frog, mountain yellow-legged (Sierra Nevada DPS).	U.S.A. (CA, NV).
C*	2	R1	<i>Rana pretiosa</i>	Ranidae	Frog, Oregon spotted	U.S.A. (CA, OR, WA), Canada (BC).
C*	5	R1	<i>Rana onca</i>	Ranidae	Frog, relict leopard	U.S.A. (AZ, NV, UT).
C*	3	R3	<i>Cryptobranchus alleganiensis bishopi</i>	Cryptobranchidae	Hellbender, Ozark	U.S.A. (AR, MO).
C*	2	R2	<i>Eurycea waterlooensis</i>	Plethodontidae	Salamander, Austin blind	U.S.A. (TX).
C*	2	R2	<i>Eurycea naufragia</i>	Plethodontidae	Salamander, Georgetown	U.S.A. (TX).
C*	2	R2	<i>Eurycea chisholmensis</i>	Plethodontidae	Salamander, Salado	U.S.A. (TX).
C*	3	R6	<i>Bufo boreas boreas</i>	Bufo	Toad, boreal (Southern Rocky Mountains DPS).	U.S.A. (AK, CA, CO, ID, MT, NM, OR, UT, WA, WY), Canada (BC).
C*	11	R1	<i>Bufo canorus</i>	Bufo	Toad, Yosemite	U.S.A. (CA).
C*	2	R4	<i>Necturus alabamensis</i>	Proteidae	Waterdog, black warrior (= Sipsy Fork).	U.S.A. (AL).
Fishes						
PE	3	R1	<i>Gila bicolor vaccaceps</i>	Cyprinidae	Chub, Cowhead Lake tui	U.S.A. (CA).
PE	2	R2	<i>Gila intermedia</i>	Cyprinidae	Chub, Gila	U.S.A. (AZ, NM), Mexico.
C*	11	R6	<i>Etheostoma cragini</i>	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK).
C*	6	R4	<i>Etheostoma nigrum susanae</i>	Percidae	Darter, Cumberland johnny	U.S.A. (KY, TN).
C*	5	R4	<i>Percina aurora</i>	Percidae	Darter, Pearl	U.S.A. (LA, MS).
C*	5	R4	<i>Etheostoma phytophilum</i>	Percidae	Darter, rush	U.S.A. (AL).
C*	2	R4	<i>Etheostoma moorei</i>	Percidae	Darter, yellowcheek	U.S.A. (AR).
C*	3	R6	<i>Thymallus arcticus</i>	Salmonidae	Grayling, Fluvial arctic (upper Missouri River DPS).	U.S.A. (MT, WY).
C*	2	R4	<i>Noturus</i> sp.	Ictaluridae	Madtom, chucky	U.S.A. (TN).
C	5	R4	<i>Moxostoma</i> sp.	Catostomidae	Redhorse, sicklefin	U.S.A. (GA, NC, TN).
C*	2	R3	<i>Cottus</i> sp.	Cottidae	Sculpin, grotto	U.S.A. (MO).
C*	5	R2	<i>Notropis oxyrinchus</i>	Cyprinidae	Shiner, sharpnose	U.S.A. (TX).
C*	5	R2	<i>Notropis buccula</i>	Cyprinidae	Shiner, smalleye	U.S.A. (TX).
C*	3	R2	<i>Catostomus discobolus yarowii</i>	Catostomidae	Sucker, Zuni bluehead	U.S.A. (AZ, NM).
PSAT	N/A	R1	<i>Salvelinus malma</i>	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia.
Clams						
C	5	R4	<i>Villosa choctawensis</i>	Unionidae	Bean, Choctaw	U.S.A. (AL, FL).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
 [Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R3	<i>Villosa fabalis</i>	Unionidae	Bean, rayed	U.S.A. (IL, IN, KY, MI, NY, OH, TN, PA, VA, WV), Canada (ON).
C	2	R4	<i>Fusconaia</i> (= <i>Obovaria</i>) <i>rotulata</i> .	Unionidae	Ebonyshell, round	U.S.A. (AL, FL).
C*	2	R2	<i>Popenaia popei</i>	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico.
C*	5	R4	<i>Ptychobranhus subtentum</i>	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA).
C	2	R4	<i>Ptychobranhus jonesi</i>	Unionidae	Kidneyshell, southern	U.S.A. (AL, FL).
C*	5	R4	<i>Lampsilis rafinesqueana</i>	Unionidae	Mucket, Neosho	U.S.A. (AR, KS, MO, OK).
C	2	R3	<i>Plethobasus cyphus</i>	Unionidae	Mussel, sheepnose	U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV).
C*	2	R4	<i>Margaritifera marrianae</i>	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL)
C*	5	R4	<i>Lexingtonia dolabelloides</i>	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA)
C	5	R4	<i>Pleurobema strodeanum</i>	Unionidae	Pigtoe, fuzzy	U.S.A. (AL, FL).
C*	2	R4	<i>Pleurobema hanleyanum</i>	Unionidae	Pigtoe, Georgia	U.S.A. (AL, GA, TN)
C	5	R4	<i>Fusconaia escambia</i>	Unionidae	Pigtoe, narrow	U.S.A. (AL, FL).
C	11	R4	<i>Quincuncina burkei</i>	Unionidae	Pigtoe, tapered	U.S.A. (AL, FL).
C	5	R4	<i>Lampsilis australis</i>	Unionidae	Sandshell, southern	U.S.A. (AL, FL).
C	4	R3	<i>Cumberlandia monodonta</i>	Margaritiferidae	Spectaclecase	U.S.A. (AL, AR, IA, IN, IL, KS, KY, MO, MN, NE, OH, TN, VA, WI, WV).
C*	5	R4	<i>Elliptio spinosa</i>	Unionidae	Spinymussel, Altamaha	U.S.A. (GA).
Snails						
C*	9	R6	<i>Oreohelix peripherica wasatchensis</i> .	Oreohelicidae	Mountainsnail, Ogden	U.S.A. (UT)
C*	8	R6	<i>Stagnicola bonnevillensis</i>	Lymnaeidae	Pondsnail, Bonneville	U.S.A. (UT).
C*	2	R4	<i>Leptoxis foremani</i> (= <i>downei</i>)	Pleuroceridae	Rocksnail, Interrupted (= Georgia).	U.S.A. (GA, AL).
C*	2	R1	<i>Ostodes strigatus</i>	Potariidae	Sisi snail	U.S.A. (AS).
C*	2	R2	<i>Pseudotryonia adamantina</i>	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX).
C*	2	R1	<i>Samoana fragilis</i>	Partulidae	Snail, fragile tree	U.S.A. (GU, MP).
C*	2	R1	<i>Partula radiolata</i>	Partulidae	Snail, Guam tree	U.S.A. (GU).
C*	2	R1	<i>Partula gibba</i>	Partulidae	Snail, Humped tree	U.S.A. (GU, MP)
PE	2	R2	<i>Tryonia kosteri</i>	Hydrobiidae	Snail, Koster's tryonia	U.S.A. (NM).
C*	2	R1	<i>Partulina semicarinata</i>	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	<i>Partulina variabilis</i>	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	<i>Partula langfordi</i>	Partulidae	Snail, Langford's tree	U.S.A. (MP).
PE	2	R2	<i>Assimineia pecos</i>	Assimineidae	Snail, Pecos assimineia	U.S.A. (NM, TX), Mexico
C*	2	R2	<i>Cochliopa texana</i>	Hydrobiidae	Snail, Phantom cave	U.S.A. (TX).
C*	2	R1	<i>Eua zebrina</i>	Partulidae	Snail, Tutuila tree	U.S.A. (AS).
C*	2	R2	<i>Pyrgulopsis chupadera</i>	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM).
C*	2	R1	<i>Pyrgulopsis notidicola</i>	Hydrobiidae	Springsnail, elongate mud meadows.	U.S.A. (NV).
C*	11	R2	<i>Pyrgulopsis gilae</i>	Hydrobiidae	Springsnail, Gila	U.S.A. (NM).
C*	2	R2	<i>Tryonia circumstriata</i> (= <i>stocktonensis</i>).	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX).
C*	5	R2	<i>Pyrgulopsis thompsoni</i>	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico
C*	11	R2	<i>Pyrgulopsis thermalis</i>	Hydrobiidae	Springsnail, New Mexico	U.S.A. (NM).
C*	5	R2	<i>Pyrgulopsis morrisoni</i>	Hydrobiidae	Springsnail, Page	U.S.A. (AZ).
C*	2	R2	<i>Tryonia cheatumi</i>	Hydrobiidae	Springsnail (= Tryonia), Phantom.	U.S.A. (TX).
PE	2	R2	<i>Pyrgulopsis roswellensis</i>	Hydrobiidae	Springsnail, Roswell	U.S.A. (NM).
C*	2	R2	<i>Pyrgulopsis trivialis</i>	Hydrobiidae	Springsnail, Three Forks	U.S.A. (AZ).
C*	2	R1	<i>Newcombia cumingi</i>	Achatinellidae	Tree snail, Newcomb's	U.S.A. (HI).
Insects						
C*	11	R6	<i>Zaitzevia thermae</i>	Elmidae	Beetle, Warm Springs Zaitzevian riffle.	U.S.A. (MT).
C*	2	R1	<i>Nysius wekiuicola</i>	Lygaeidae	Bug, Wekiu	U.S.A. (HI).
C*	3	R1	<i>Hypolimnys octocula mariannensis</i> .	Nymphalidae	Butterfly, Mariana eight-spot	U.S.A. (GU, MP).
C*	2	R1	<i>Vagrans egestina</i>	Nymphalidae	Butterfly, Mariana wandering.	U.S.A. (GU, MP).
C*	6	R4	<i>Cyclargus thomasi bethunebakeri</i> .	Lycaenidae	Butterfly, Miami blue	U.S.A. (FL), Bahamas.
C*	5	R4	<i>Glyphopsyche sequatchie</i>	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN).
C	5	R4	<i>Pseudanophthalmus insularis</i> .	Carabidae	Cave beetle, Baker Station (= insular).	U.S.A. (TN).
C*	5	R4	<i>Pseudanophthalmus major</i>	Carabidae	Cave beetle, beaver	U.S.A. (KY).
C*	5	R4	<i>Pseudanophthalmus caecus</i>	Carabidae	Cave beetle, Clifton	U.S.A. (KY).
C	11	R4	<i>Pseudanophthalmus colemanensis</i> .	Carabidae	Cave beetle, Coleman	U.S.A. (TN).
C	5	R4	<i>Pseudanophthalmus fowlerae</i> .	Carabidae	Cave beetle, Fowler's	U.S.A. (TN).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
 [Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	5	R4	<i>Pseudanophthalmus pholeter</i>	Carabidae	Cave beetle, greater Adams	U.S.A. (KY).
C*	5	R4	<i>Pseudanophthalmus frigidus</i>	Carabidae	Cave beetle, icebox	U.S.A. (KY).
C	5	R4	<i>Pseudanophthalmus tiresias</i>	Carabidae	Cave beetle, Indian Grave Point (= Soothsayer).	U.S.A. (TN).
C*	5	R4	<i>Pseudanophthalmus inquisitor</i>	Carabidae	Cave beetle, inquirer	U.S.A. (TN).
C*	5	R4	<i>Pseudanophthalmus cataryctos</i>	Carabidae	Cave beetle, lesser Adams	U.S.A. (KY).
C*	5	R4	<i>Pseudanophthalmus troglodytes</i>	Carabidae	Cave beetle, Louisville	U.S.A. (KY).
C	5	R4	<i>Pseudanophthalmus paulus</i>	Carabidae	Cave beetle, Noblett's	U.S.A. (TN).
C*	11	R4	<i>Pseudanophthalmus inexpectatus</i>	Carabidae	Cave beetle, surprising	U.S.A. (KY).
C*	5	R4	<i>Pseudanophthalmus parvus</i>	Carabidae	Cave beetle, Tatum	U.S.A. (KY).
C*	3	R1	<i>Euphydryas editha taylori</i>	Nymphalidae	Checkerspot, Taylor's (= Whulge).	U.S.A. (OR, WA), Canada (BC).
C*	9	R1	<i>Megalagrion nigrohamatum nigrolineatum</i>	Coenagrionidae	Damselfly, blackline Hawaiian.	U.S.A. (HI).
C*	2	R1	<i>Megalagrion leptodemas</i>	Coenagrionidae	Damselfly, crimson Hawaiian.	U.S.A. (HI).
C*	2	R1	<i>Megalagrion nesiotes</i>	Coenagrionidae	Damselfly, flying earwig Hawaiian.	U.S.A. (HI).
C*	2	R1	<i>Megalagrion oceanicum</i>	Coenagrionidae	Damselfly, oceanic Hawaiian.	U.S.A. (HI).
C*	8	R1	<i>Megalagrion xanthomelas</i>	Coenagrionidae	Damselfly, orangeblack Hawaiian.	U.S.A. (HI).
C*	2	R1	<i>Megalagrion pacificum</i>	Coenagrionidae	Damselfly, Pacific Hawaiian	U.S.A. (HI).
C*	5	R1	<i>Phaeogramma</i> sp.	Tephritidae	Gall fly, Po'olanui	U.S.A. (HI).
C	5	R1	<i>Ambrysus funebris</i>	Naucoridae	Naucorid bug (= Furnace Creek), Nevares Spring.	U.S.A. (CA).
PE	2	R1	<i>Drosophila aglaia</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
C*	2	R1	<i>Drosophila attigua</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila differens</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
C*	2	R1	<i>Drosophila digressa</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila hemipeza</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila heteroneura</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila montgomeryi</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila mulli</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila musaphila</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila neoclavisetae</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila obatai</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila ochrobasis</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila substenoptera</i>	Drosophilidae	Fly, Picture wing [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila tarphytrichia</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
C*	5	R2	<i>Heterelmis stephani</i>	Elmidae	Riffle beetle, Stephan's	U.S.A. (AZ).
C*	11	R3	<i>Hesperia dacotae</i>	Hesperiidae	Skipper, Dakota	U.S.A. (MN, IA, SD, ND, IL), Canada.
C*	5	R1	<i>Polites mardon</i>	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA).
C*	9	R6	<i>Cicindela limbata albissima</i>	Cicindelidae	Tiger beetle, Coral Pink Sand Dunes.	U.S.A. (UT).
C*	5	R4	<i>Cicindela highlandensis</i>	Cicindelidae	Tiger beetle, highlands	U.S.A. (FL).
PE	3	R6	<i>Cicindela nevadica lincolniiana</i>	Cicindelidae	Tiger beetle, Salt Creek	U.S.A. (NE).
Arachnids						
C*	2	R2	<i>Cicurina wartoni</i>	Dictynidae	Meshweaver, Warton's cave	U.S.A. (TX).
CRUSTACEANS						
C	2	R2	<i>Gammarus hyalleloides</i>	Gammaridae	Amphipod, diminutive	U.S.A. (TX).
PE	N/A	R2	<i>Gammarus desperatus</i>	Gammaridae	Amphipod, Noel's	U.S.A. (NM).
C*	2	R1	<i>Antecaridina lauensis</i>	Atyidae	Shrimp, anchialine pool	U.S.A. (HI), Mozambique, Saudi Arabia, Japan.
C*	2	R1	<i>Calliasmata pholidota</i>	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI), Funafuti Atoll, Saudi Arabia, Sinai Peninsula, Tuvalu.
C*	2	R1	<i>Metabetaeus lohena</i>	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	2	R1	<i>Palaemonella burnsi</i>	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	2	R1	<i>Procaris hawaiana</i>	Procaridae	Shrimp, anchialine pool	U.S.A. (HI).
C*	1	R1	<i>Vetericaris chaceorum</i>	Procaridae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R4	<i>Typhlatya monae</i>	Atyidae	Shrimp, troglobitic groundwater.	U.S.A. (PR), Barbuda, Dominican Republic.
Flowering Plants						
C*	11	R1	<i>Abronia alpina</i>	Nyctaginaceae	Sand-verbena, Ramshaw Meadows.	U.S.A. (CA).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
 [Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	11	R6	<i>Aliciella cespitosa</i>	Polemoniaceae	Alice-flower, wonderland	U.S.A. (UT).
C*	11	R4	<i>Arabis georgiana</i>	Brassicaceae	Rockcress, Georgia	U.S.A. (AL, GA).
C*	11	R4	<i>Argythamnia blodgettii</i>	Euphorbiaceae	Silverbush, Blodgett's	U.S.A. (FL).
C*	3	R1	<i>Artemisia campestris</i> ssp. <i>borealis</i> var. <i>wormskioldii</i>	Asteraceae	Wormwood, northern	U.S.A. (OR, WA).
C*	2	R1	<i>Astellia waialealae</i>	Liliaceae	Pa'iniu	U.S.A. (HI).
C*	8	R6	<i>Astragalus equisoleensis</i>	Fabaceae	Milk-vetch, horseshoe	U.S.A. (UT).
C*	8	R6	<i>Astragalus tortipes</i>	Fabaceae	Milk-vetch, Sleeping Ute	U.S.A. (CO).
C*	2	R1	<i>Bidens amplexens</i>	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	<i>Bidens campylothea</i> pentamera.	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	<i>Bidens campylothea waihoiensis</i>	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R1	<i>Bidens conjuncta</i>	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	<i>Bidens micrantha</i> ctenophylla.	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R4	<i>Brickellia mosieri</i>	Asteraceae	Brickell-bush, Florida	U.S.A. (FL).
C*	2	R1	<i>Calamagrostis expansa</i>	Poaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Calamagrostis hillebrandii</i>	Poaceae	No common name	U.S.A. (HI).
C*	5	R4	<i>Calliandra locoensis</i>	Mimosaceae	No common name	U.S.A. (PR).
C*	5	R1	<i>Calochortus persistens</i>	Liliaceae	Mariposa lily, Siskiyow	U.S.A. (CA, OR).
C*	5	R4	<i>Calyptanthus estremerae</i>	Myrtaceae	No common name	U.S.A. (PR).
C*	2	R1	<i>Canavalia napaliensis</i>	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	2	R1	<i>Canavalia pubescens</i>	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	8	R6	<i>Castilleja aquariensis</i>	Scrophulariaceae	Paintbrush, Aquarius	U.S.A. (UT).
C*	11	R1	<i>Castilleja christii</i>	Scrophulariaceae	Paintbrush, Christ's	U.S.A. (ID).
C*	6	R4	<i>Chamaecrista lineata</i> var. <i>keyensis</i>	Fabaceae	Pea, Big Pine partridge	U.S.A. (FL).
C*	9	R4	<i>Chamaesyce deltoidea</i> pinetorum.	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL).
C*	6	R4	<i>Chamaesyce deltoidea</i> serpyllum.	Euphorbiaceae	Spurge, wedge	U.S.A. (FL).
C*	2	R1	<i>Chamaesyce eleanoriae</i>	Euphorbiaceae	Ākoko	U.S.A. (HI).
C*	3	R1	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i>	Euphorbiaceae	Ākoko	U.S.A. (HI).
C*	3	R1	<i>Chamaesyce remyi</i> var. <i>remyi</i>	Euphorbiaceae	Ākoko	U.S.A. (HI).
C*	2	R1	<i>Charpentiera densiflora</i>	Amaranthaceae	Papala	U.S.A. (HI).
C*	6	R1	<i>Chorizanthe parryi</i> var. <i>fernandina</i>	Polygonaceae	Spineflower, San Fernando Valley.	U.S.A. (CA).
C*	2	R4	<i>Chromolaena frustrata</i>	Asteraceae	Thoroughwort, Cape Sable	U.S.A. (FL).
C*	2	R4	<i>Consoula corallicola</i>	Cactaceae	Cactus, Florida semaphore	U.S.A. (FL).
C*	2	R4	<i>Cordia rupicola</i>	Boraginaceae	No common name	U.S.A. (PR), Anegada.
C*	2	R1	<i>Cyanea asplenifolia</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea calycina</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea eleleensis</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea kuhiihewa</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea kunthiana</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea lanceolata</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea obtusa</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea tritomantha</i>	Campanulaceae	Aku	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra filipes</i>	Gesneriaceae	Haiwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra kaulantha</i>	Gesneriaceae	Haiwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra oenobarba</i>	Gesneriaceae	Haiwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra oxybapha</i>	Gesneriaceae	Haiwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra sessilis</i>	Gesneriaceae	Haiwale	U.S.A. (HI).
C*	9	R4	<i>Dalea carthagenensis</i> floridana.	Fabaceae	Prairie-clover, Florida	U.S.A. (FL).
C*	5	R5	<i>Dichanthellum hirstii</i>	Poaceae	Panic grass, Hirsts'	U.S.A. (DE, GA, NC, NJ).
C*	5	R4	<i>Digitaria pauciflora</i>	Poaceae	Crabgrass, Florida pineland	U.S.A. (FL).
C*	3	R1	<i>Dubautia imbricata imbricata</i>	Asteraceae	Naënaë	U.S.A. (HI).
C*	3	R1	<i>Dubautia plantaginea</i> magnifolia.	Asteraceae	Naënaë	U.S.A. (HI).
C*	2	R1	<i>Dubautia waialealae</i>	Asteraceae	Naënaë	U.S.A. (HI).
C*	6	R2	<i>Echinomastus erectocentrus</i> var. <i>acutensis</i>	Cactaceae	Cactus, Acuna	U.S.A. (AZ), Mexico.
C*	11	R1	<i>Erigeron basalticus</i>	Asteraceae	Daisy, basalt	U.S.A. (WA).
C*	5	R2	<i>Erigeron lemmonii</i>	Asteraceae	Fleabane, Lemmon	U.S.A. (AZ).
C*	2	R1	<i>Eriogonum codium</i>	Polygonaceae	Buckwheat, Umtanum Desert.	U.S.A. (WA).
C	2	R1	<i>Eriogonum diatomaceum</i>	Polygonaceae	Buckwheat, Churchill Narrows.	U.S.A. (NV).
C*	5	R1	<i>Eriogonum kelloggii</i>	Polygonaceae	Buckwheat, Red Mountain	U.S.A. (CA).
C*	2	R1	<i>Festuca hawaiiensis</i>	Poaceae	No common name	U.S.A. (HI).
C*	11	R2	<i>Festuca ligulata</i>	Poaceae	Guadalupe fescue	U.S.A. (TX), Mexico.
C*	2	R1	<i>Gardenia remyi</i>	Rubiaceae	Nanu	U.S.A. (HI).
C*	2	R1	<i>Geranium hanaense</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	8	R1	<i>Geranium hillebrandii</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	2	R1	<i>Geranium kauaiense</i>	Geraniaceae	Nohoanu	U.S.A. (HI).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
 [Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	5	R4	<i>Gonocalyx concolor</i>	Ericaceae	No common name	U.S.A. (PR).
C*	5	R1	<i>Hazardia orcuttii</i>	Asteraceae	Orcutt's hazardia	U.S.A. (CA), Mexico
C*	2	R1	<i>Hedyotis fluvialis</i>	Rubiaceae	Kampuaa	U.S.A. (HI).
C*	11	R4	<i>Helianthus verticillatus</i>	Asteraceae	Sunflower, whorle	U.S.A. (AL, GA, TN).
C*	5	R2	<i>Hibiscus dasycalyx</i>	Malvaceae	Rose-mallow, Neches River	U.S.A. (TX).
C*	9	R4	<i>Indigofera mucronata keyensis</i>	Fabaceae	Indigo, Florida	U.S.A. (FL).
C	2	R6	<i>Ipomopsis polyantha</i>	Polemoniaceae	Skyrocket, Pagosa	U.S.A. (CO).
C*	5	R1	<i>Ivesia webberi</i>	Rosaceae	Ivesia, Webber	U.S.A. (CA, NV).
C*	3	R1	<i>Joinvillea ascendens ascendens</i>	Joinvilleaceae	'Ohe	U.S.A. (HI).
C*	2	R1	<i>Keysseria (= Lagenifera) erici</i>	Asteraceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Keysseria (= Lagenifera) helenae</i>	Asteraceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Korthalsella degeneri</i>	Viscaceae	Hulumoa	U.S.A. (HI).
C*	2	R1	<i>Labordia helleri</i>	Loganiaceae	Kamakahala	U.S.A. (HI).
C*	2	R1	<i>Labordia pumila</i>	Loganiaceae	Kamakahala	U.S.A. (HI).
C*	5	R4	<i>Leavenworthia crassa</i>	Brassicaceae	Gladeccress, unnamed	U.S.A. (AL).
C*	2	R2	<i>Leavenworthia texana</i>	Brassicaceae	Gladeccress, Texas golden	U.S.A. (TX).
C*	5	R4	<i>Lesquerella globosa</i>	Brassicaceae	Bladderpod, Short's	U.S.A. (IN, KY, TN).
C*	5	R1	<i>Lesquerella tuplashensis</i>	Brassicaceae	Bladderpod, White Bluffs	U.S.A. (WA).
C*	2	R4	<i>Linum arenicola</i>	Linaceae	Flax, sand	U.S.A. (FL).
C*	3	R4	<i>Linum carteri</i> var. <i>carteri</i>	Linaceae	Flax, Carter's small-flowered	U.S.A. (FL).
C*	2	R1	<i>Lysimachia daphnoides</i>	Primulaceae	Lehua makanoe	U.S.A. (HI).
C*	2	R1	<i>Melicope christophersenii</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope degeneri</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope hiiakae</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope makahae</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope paniculata</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope puberula</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Myrsine fosbergii</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	<i>Myrsine mezii</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	<i>Myrsine vaccinioides</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C*	8	R5	<i>Nartheicum americanum</i>	Liliaceae	Asphodel, bog	U.S.A. (DE, NC, NJ, NY, SC).
C*	2	R1	<i>Nothocestrum latifolium</i>	Solanaceae	'Aiea	U.S.A. (HI).
C*	2	R1	<i>Ochrosia haleakalae</i>	Apocynaceae	Holei	U.S.A. (HI).
C*	11	R2	<i>Paronychia congesta</i>	Caryophyllaceae	Whitlow-wort, bushy	U.S.A. (TX).
C*	6	R2	<i>Pediocactus peeblesianus fickeiseniae</i>	Cactaceae	Cactus, Fickeisen plains	U.S.A. (AZ).
C*	2	R6	<i>Penstemon debilis</i>	Scrophulariaceae	Beardtongue, Parachute	U.S.A. (CO).
C*	2	R6	<i>Penstemon grahamii</i>	Scrophulariaceae	Beardtongue, Graham	U.S.A. (CO, UT).
C*	6	R6	<i>Penstemon scariousus</i> var. <i>albifluvis</i>	Scrophulariaceae	Beardtongue, White River	U.S.A. (CO, UT).
C*	2	R1	<i>Peperomia subpetiolata</i>	Piperaceae	'Ala 'ala wai nui	U.S.A. (HI).
C	2	R1	<i>Phacelia stellaris</i>	Hydrophyllaceae	Brand's phacelia	U.S.A. (CA), Mexico.
C*	8	R6	<i>Phacelia submutica</i>	Hydrophyllaceae	Phacelia, DeBeque	U.S.A. (CO).
C*	2	R1	<i>Phyllostegia bracteata</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Phyllostegia floribunda</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Phyllostegia hispida</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Pittosporum napaliense</i>	Pittosporaceae	Ho'awa	U.S.A. (HI).
C*	5	R4	<i>Platanthera integrilabia</i>	Orchidaceae	Orchid, white fringeless	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
C*	3	R1	<i>Platydesma cornuta</i> var. <i>cornuta</i>	Rutaceae	No common name	U.S.A. (HI).
C*	3	R1	<i>Platydesma cornuta</i> var. <i>decurrens</i>	Rutaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Platydesma remyi</i>	Rutaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Platydesma rostrata</i>	Rutaceae	Pilo kea lau li'i	U.S.A. (HI).
C	2	R1	<i>Pleomele fernaldii</i>	Agavaceae	Hala pepe	U.S.A. (HI).
C*	2	R1	<i>Pleomele forbesii</i>	Agavaceae	Hala pepe	U.S.A. (HI).
C*	5	R1	<i>Potentilla basaltica</i>	Rosaceae	Cinquefoil, Soldier Meadow	U.S.A. (NV).
C*	2	R1	<i>Pritchardia hardyi</i>	Asteraceae	Lo'ulu	U.S.A. (HI).
C*	3	R1	<i>Pseudognaphalium (=Gnaphalium) sandwicensium</i> var. <i>molokaiense</i>	Asteraceae	'Ena'ena	U.S.A. (HI).
C*	2	R1	<i>Psychotria grandiflora</i>	Rubiaceae	Kopiko	U.S.A. (HI).
C*	3	R1	<i>Psychotria hexandra</i> var. <i>oahuensis</i>	Rubiaceae	Kopiko	U.S.A. (HI).
C*	2	R1	<i>Psychotria hobbii</i>	Rubiaceae	Kopiko	U.S.A. (HI).
C*	2	R1	<i>Pteralyxia macrocarpa</i>	Apocynaceae	Kaulu	U.S.A. (HI).
C*	2	R1	<i>Ranunculus hawaiiensis</i>	Ranunculaceae	Makou	U.S.A. (HI).
C*	2	R1	<i>Ranunculus mauianensis</i>	Ranunculaceae	Makou	U.S.A. (HI).
C*	8	R1	<i>Rorippa subumbellata</i>	Brassicaceae	Cress, Tahoe yellow	U.S.A. (CA, NV).
C*	2	R1	<i>Schiedea attenuata</i>	Caryophyllaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Schiedea pubescens</i>	Caryophyllaceae	Ma'oli'oli	U.S.A. (HI).
C*	2	R1	<i>Schiedea salicaria</i>	Caryophyllaceae	No common name	U.S.A. (HI).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
 [Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	5	R1	<i>Sedum eastwoodiae</i>	Crassulaceae	Stonecrop, Red Mountain ...	U.S.A. (CA).
C*	2	R1	<i>Sicyos macrophyllus</i>	Cucurbitaceae	'Anunu	U.S.A. (HI).
C*	9	R1	<i>Sidalcea hickmanii parishii</i>	Malvaceae	Checkerbloom, Parish's	U.S.A. (CA).
C	9	R4	<i>Sideroxylon reclinatum</i> ssp. <i>austrorloridense</i> .	Sapotaceae	Bully, Everglades	U.S.A. (FL).
C*	2	R1	<i>Solanum nelsonii</i>	Solanaceae	Popolo	U.S.A. (HI).
C	8	R4	<i>Solidago plumosa</i>	Asteraceae	Goldenrod, Yadkin River	U.S.A. (NC).
C*	2	R1	<i>Stenogyne cranwelliae</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Stenogyne kealiae</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	5	R4	<i>Symphotrichum georgianum</i> .	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC).
C*	2	R1	<i>Zanthoxylum oahuense</i>	Rutaceae	A'e	U.S.A. (HI).

Ferns and Allies

C*	11	R1	<i>Botrychium lineare</i>	Ophioglossaceae	Moonwort, slender	U.S.A. (CA, CO, ID, MT, OR, WA), Canada (AB, BC, NB, QC).
C*	2	R1	<i>Christella boydiae</i> (= <i>Cyclosorus boydiae</i> var. <i>boydiae</i> + <i>Cyclosorus boydiae</i> <i>kipahuluensis</i>).	Thelypteridaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Doryopteris takeuchii</i>	Pteridaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Huperzia</i> (= <i>Phlegmariurus</i>) <i>stemmermanniae</i> .	Lycopodiaceae	Wawae'iole	U.S.A. (HI).
C*	3	R1	<i>Microlepia strigosa</i> var. <i>mauiensis</i> (= <i>Microlepia mauiensis</i>).	Dennstaedtiaceae	Palapali	U.S.A. (HI).

TABLE 2.—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING
 [Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Commom name	Historic range
Code	Expl.					
Mammals						
T	L	R1	<i>Pteropus mariannus mariannus.</i>	Pteropodidae	Bat, Mariana fruit (= Mariana flying fox) (Aguijan, etc.).	Western Pacific Ocean, U.S.A. (GU, MP).
Rc	A	6	<i>Cynomys ludovicianus</i>	Sciuridae	Prairie dog, black-tailed	U.S.A. (AZ, CO, KS, MT, NE, NM, ND, OK, SD, TX, WY), Canada, Mexico.
Amphibians						
T	L	R1	<i>Ambystoma californiense</i>	Ambystomatidae	Salamander, California tiger	U.S.A. (CA).
Clams						
Rc	N	R4	<i>Pleurobema troschelianum</i>	Unionidae	Clubshell, Alabama	U.S.A. (AL, GA, TN).
Rc	N	R4	<i>Pleurobema chattanoogaense.</i>	Unionidae	Clubshell, painted	U.S.A. (AL, GA, TN).
Insects						
Rp	A	R2	<i>Euphydryas anicia cloudcrofti.</i>	Nymphalidae	Butterfly, Sacramento Mountains checkerspot.	U.S.A. (NM).
Rc	A	R5	<i>Pseudanophthalmus holsingeri.</i>	Carabidae	Cave Beetle, Holsinger's	U.S.A. (VA).
Crustaceans						
Rc	A	R4	<i>Fallicambarus gordonii</i>	Cambaridae	Crayfish, Camp Shelby burrowing.	U.S.A. (MS).

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/public-laws/public-laws.html>.

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H.J. Res. 19/P.L. 109-11

Providing for the appointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2005; 119 Stat. 229)

H.J. Res. 20/P.L. 109-12

Providing for the appointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian

Institution. (May 5, 2005; 119 Stat. 230)

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